THE TROUBLE WITH FREAKONOMICS
CASS R. SUNSTEIN

AFTER THE LONDON BOMBING
MARC GRANETZ, DAVID PRYCE-JONES

The Rove-Plame Affair
Jonathan Cohn, Ryan Lizza

THE NEW REPUBLIC

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THERE'S MORE AT STAKE

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THE NEW REPUBLIC
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THE NEW REPUBLIC
A JOURNAL OF POLITICS AND THE ARTS

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CORRESPONDENCE

POPULAR DEMAND

GREGG EASTERBROOK'S HOPEFUL essay on the possibility that warfare is trending toward obsolescence fails to meet the aspirations of its lofty title ("The End of War?" May 30). Warfare may presently be in decline as a result of increased democratization and prosperity, lack of conflict between superpowers, and improved international peacekeeping. But Easterbrook underplays the threat of nations going to war in order to secure scarce resources in the face of booming population growth. The world's population is projected to increase by over one-third by the middle of this century, adding nearly three billion more bodies to clothe and feed. Meanwhile, the two most finite and vital resources on the planet, oil and water, are being depleted at an unsustainable rate when compared to population growth. Perhaps the Iraq war and the conflict in Sudan should not be viewed as fading data points predicting the phaseout of war, but instead as new data points tracking armed conflicts motivated by the desire to control vital resources.

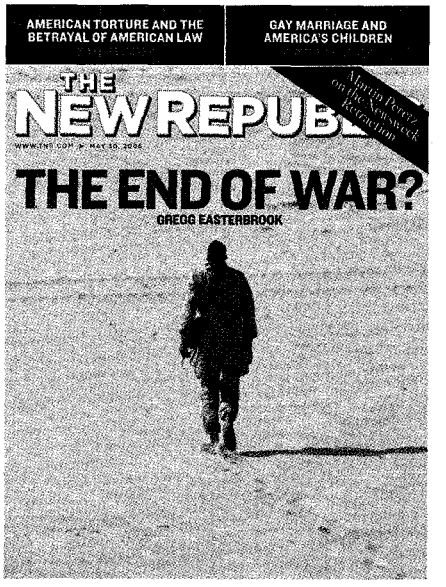
JEREMY TRASK
Natick, Massachusetts

TRUTH AND CONSEQUENCES

MARTIN PERETZ'S INTEMPERATE attack on my reporting merits a full response ("Consequences," May 30). No one at *Newsweek*—least of all me—is defending the wording of the May 9 item about the U.S. Southern Command investigation into Guantánamo Bay. We made a mistake by portraying a Koran-flushing incident as confirmed by the U.S. military and have fully acknowledged it. But, in his skewed account of what went awry, Peretz is flat wrong to suggest I gullibly relied on an untrustworthy source in order to nail a "big scoop." To start, neither I nor my editors thought we had a big scoop. That's why the entire two-paragraph item ran on the second page of our "Periscope" section. The Koran incident was listed as one of a number of Guantánamo abuses—the others seemingly more egregious—that would be cited in the upcoming Southcom report.

The source who provided the information may have been mistaken about where he saw the reference to the Koran incident and what precisely he saw. But the source was an entirely trustworthy, loyal, and responsible U.S. government official who had no axe to grind and who had proved extremely reliable in the past. Peretz wonders what other bad information this "magical source" has provided me. He is welcome to comb my extensive reporting on terrorism, intelligence, and related issues over the years and to identify anything else he thinks I have gotten wrong.

Peretz demands to know whether I bothered to read any relevant documents before writing the item, starting with the FBI e-mails that provoked the Southcom inquiry. I did indeed read them. In fact, I quoted from them at length in a January 5, 2005, *Newsweek Online* "Terror Watch" column (co-authored with my colleague Mark Hosenball) and again in a January 17, 2005, story in the magazine. He is right that there is no reference to Koranic desecration in the FBI e-mails that had, at that point, been made public. But, as my colleague Evan Thomas pointed out in the May 23 issue of *Newsweek*, the Southcom probe was broadened beyond the cases cited in the FBI e-mails to include other allegations of abuse. Peretz suggests there are no documents at all "stating that any American official anywhere during the present war against Islamic terrorists abused the sacred book of the Muslims." But there are reams of such documents—Human Rights Watch reports, lawsuits, and FBI interview summaries (upon which many of the e-mails were based)—asserting precisely that. As the *Los Angeles Times* reported in a front-page story on May 22, ("DOZENS HAVE ALLEGED KORAN'S MISHANDLING"), there have been numerous


AMERICAN TORTURE AND THE BETRAYAL OF AMERICAN LAW
GAY MARRIAGE AND AMERICA'S CHILDREN
THE NEW REPUBLIC
THE END OF WAR?
GREGG EASTERBROOK

claims by detainees of Korans being kicked, torn, and stomped on by American soldiers. The specific allegation of a Koran being thrown into the toilet was included in a lawsuit against the government brought last fall by three British detainees released from Guantánamo. It was also made by another detainee questioned by the FBI in August 2002—as recorded in a FBI report of the interview that has since been released under the Freedom of Information Act. After two weeks of adamant denials by Pentagon officials that there were any credible allegations of Koran misconduct, Brigadier General Jay Hood, commander of Joint Task Force Guantánamo, acknowledged on May 26 that there had, in fact, been at least five confirmed cases of "mishandling" of the Muslim holy book by American soldiers—including two instances in which the offenders had been punished. Those cases, according to a U.S. Southern Command release on June 3, include instances in which Korans

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THE NEW REPUBLIC (ISSN 0028-6583), Vol. 233, Number 4, Issue 4,723, July 25, 2005. (Printed in the United States on July 14, 2005.) Published weekly (except for combined issues dated March 28 & April 4, May 2 & 9, June 6 & 13, July 11 & 18, August 22 & 29, November 28 & December 5, and December 26, 2005 through January 9, 2006) at 1331 H Street, NW, Washington, D.C. 20005. Telephone (202) 508-4444. For advertising inquiries, please contact Grant Loomis at (202) 508-4444 or our NY sales office at (212) 465-8447. Yearly subscriptions, $79.97; foreign, $113.97 (U.S. funds); Canada, $99.97 (U.S. funds). Back issues, $8.00 domestic and $10.00 foreign/Canada (includes postage & handling). © 2005 by The New Republic, LLC. Periodicals postage paid at Washington, D.C., and additional mailing offices. Rights and permissions: fax (202) 628-9383. Indexed in Readers' Guide, Media Review Digest. For hard copy reprints, call (202) 508-4444. Microform, Canadian Periodical Index, and CD-ROM are available through ProQuest, 300 N. Zeeb Road, Ann Arbor, MI 48106. Telephone (800) 521-0600. Postmaster: Send changes of address to The New Republic, P.O. Box 420235, Palm Coast, FL 32142-0235. Member, Audit Bureau of Circulations. Unsolicited manuscripts can be returned only if accompanied by a self-addressed, stamped envelope (e-mail address: letters@tnr.com). For subscription inquiries or problems call (800) 827-1289 or visit our website at www.thenewrepublic.com.

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were kicked, stepped on, and doused with water balloons. Another had a two-word obscenity written on it. In perhaps the most notable—if not fully explained—incident, an American guard was reassigned just this spring for relieving himself near the air vent of a detainee's cell, resulting (thanks to a purported burst of wind) in the detainee's Koran being "splashed" with urine.

THE NEW REPUBLIC corrected a sentence from the diarist saying that "Seventeen people did not die at Guantánamo or Abu Ghraib" to note that at least 27 prisoners were killed in mortar attacks at Abu Ghraib. But that doesn't tell the full story, either. Another ten were killed by American soldiers at Abu Ghraib in the course of the suppression of prison riots. All told, the Pentagon's figures show 108 detainees have died in U.S. custody in Iraq and Afghanistan; 26 of those deaths (including one that occurred during interrogation at Abu Ghraib) have been confirmed as, or are being investigated for, acts of criminal homicide.

MICHAEL ISIKOFF
NEWSWEEK
Washington, D.C.

PERETZ'S ASSAULT ON *NEWSWEEK* overlooks a core reality that, in almost any other circumstance, he would surely perceive. Seventeen people, he says, "lost their lives because of the state of journalistic practice at a U.S. magazine." A competing version of cause and effect comes from someone who should know better than Peretz: Lieutenant General Karl Eikenberry, commander of the Combined Forces in Afghanistan, who advised Chief of Staff General Richard Myers that the violence was not connected to the magazine report. Even if Eikenberry had said the opposite, however, wouldn't it be more correct to say that all these people died not because of *Newsweek*, but because of their own religious fanaticism or that of those who killed them?

That is what sensible people said when the publication of Salman Rushdie's *The Satanic Verses* led to violent riots. And they would have said the same if Oriana Fallaci's powerful attack on Islamic fundamentalism had been similarly received. We would have been right to defend both books and to condemn the rioters, not the authors. *Newsweek* may be justly criticized for relying on a single source for the accuracy of so sensitive a charge. But the responsibility for the deaths of victims of a riot by religious zealots should not be laid at its door.

FLOYD ABRAMS
New York, New York

MARTIN PERETZ RESPONDS:
Michael Isikoff's deceptively intricate response is really a spider's nest of accusations made by Muslim fanatics in waging their own legal and propaganda battle against the U.S. struggle with terrorists and terrorism. I may be forgiven for insisting that allegations and lawsuits launched by Guantánamo inmates and their eager defenders like the Center for Constitutional Rights do not, by any means, constitute evidence of the inflammatory charge made in *Newsweek* about what Isikoff so daintily calls the "flushing incident." By the way, does Isikoff know of a toilet that could actually swill down a Koran, however small? Yes, it is true that the editors of *Newsweek* did not make the allegation a cover story. But what they actually did—putting it in a two-paragraph "Periscope" item—does not relieve them of responsibility for reporting facts truthfully. Floyd Abrams is correct: "Newsweek may be justly criticized for relying on a single source for the accuracy of so sensitive a charge." Alas, even this single source, as Isikoff admits, did not pan out. Abrams raises a more far-reaching issue—that the Muslim world is an especially feverish one. The media had better be absolutely correct when they allege a wrongdoing that is likely to inflame the streets of Islam. And wouldn't it be a relief if those same media—rather than deluging the public with indulgent and forbearing versions of a gentler and kinder religious civilization, appropriate for what we used to call Brotherhood Week—were to present their audiences with a rigorous, even strict account of why virtually all Muslim societies are so developmentally arrested?

CHURCH AND DIVIDED STATE

ALAN WOLFE CASTS *TAKING FAITH Seriously* as a flawed attempt by liberal academics to reclaim religion for the left. That is exactly what the book is intended *not* to do. It grows out of dialogue that began three years before Democrats found themselves scrambling for values and religious talk after

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UPDATING AMERICA'S TELECOMMUNICATIONS LAWS: WHAT'S IN IT FOR US?

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Going to the Matt

TRB
FROM ANN ARBOR

SO THIS IS HOW SERIOUS THE controversy over Karl Rove has gotten for the White House: On Monday, Press Secretary Scott McClellan actually had to dodge a question from Fox News.

It came from correspondent Carl Cameron: "Does the president continue to have confidence in Mr. Rove?" Relatively speaking, it was one of the softer inquiries McClellan fielded in an ugly briefing that *Washington Post* columnist Dana Milbank described as "perhaps the worst" of McClellan's two-year tenure. McClellan answered Cameron the same way he answered most of the reporters asking about Rove that day: by refusing to comment.

But the questions won't go away, because we now know that Rove was a key player in the infamous outing of covert CIA operative Valerie Plame. For those unfamiliar with the saga, Plame is married to Joseph Wilson, a former American ambassador whom the CIA had asked to investigate allegations that Iraq sought yellowcake uranium from Niger. Wilson determined the claims were unsubstantiated. After President Bush cited them as justification for the Iraq war, Wilson accused the administration of misleading the public. And that's where Rove comes in. In an apparent effort to discredit Wilson and perhaps intimidate other critics of the war, administration officials began talking to reporters "on background," suggesting that Wilson was not credible because his wife worked at the CIA. (The rather dubious implication seems to have been that Wilson had gotten the original research assignment only out of nepotism.)

The administration itself would eventually admit that it had overstated the intelligence about Niger. But, around the same time, articles about Wilson began to mention Plame and her affiliation, citing anonymous administration officials as sources. That prompted a Justice Department investigation, including subpoenas to journalists, since it is a federal crime to knowingly reveal the identity of a covert operative. Rove was a lead suspect all along. Now the latest edition of *Newsweek* has finally confirmed it for the public by reporting that Rove had mentioned Wilson's wife—and her work at the CIA—to Matt Cooper of *Time* magazine.

Legal trouble still seems unlikely for Rove, given the high threshold for proving a transgression, but political trouble is another matter. It's now clear that Rove's past denials of involvement—namely, his statement to CNN last year that "I didn't leak her name"—rest only on the quaintly Clintonian distinction that he never uttered the words "Valerie Plame," referring to her instead as Wilson's wife. Both McClellan and Bush himself have made broad statements about the moral impropriety of leaking such information—and the consequences that would befall any officials caught doing so. "If anyone in this administration was involved in it," McClellan said in 2003, "they would no longer be in this administration."

Or maybe they would. When conservatives make mistakes, they don't admit them. They blame the liberal media conspiracy. And the right has been trying to defuse the Plame controversy that way for a while now. Even before this latest revelation, Rich Lowry, editor of *National Review*, had called the episode an "absurd media feeding frenzy about a non-crime that journalists relentlessly hyped to hurt the Bush administration." The meme continued this week when, on MSNBC's "Hardball," *New York Post* Washington bureau chief Deborah Orin attacked the media for focusing on Rove instead of Wilson's (alleged) misstatements. On Fox News, *Weekly Standard* Executive Editor Fred Barnes made the same argument, suggesting that Rove was under scrutiny only because "three-fourths of the press and 100 percent of the Democrats are out to get him."

That last charge, which we hear every time Republicans get into ethical trouble, is particularly ironic given the sagas of two reporters ensnared in this controversy: Cooper and Judith Miller. Cooper looks like a poster boy for liberal media bias. He's a graduate of the Ivy League (Columbia University). He worked at two left-of-center opinion magazines (THE NEW REPUBLIC and *The Washington Monthly*). He's even married to a former Clinton White House operative (Mandy Grunwald). Yet, when faced with the option of revealing his source—thereby embarrassing the White House—or going to jail, Cooper held fast and prepared for imprisonment. He did agree to testify about his conversation with Rove at the very last minute. But, according to news accounts, it was only after *Time*, over Cooper's own objections, relinquished e-mails that effectively outed Rove anyway and after Rove's lawyer reminded reporters that Rove had issued a blanket waiver to all reporters involved in the inquiry. Those are hardly the actions of somebody on a crusade to get the White House.

Miller's journalism pedigree, which includes work for *The Progressive* and National Public Radio, tilts even more to the left than Cooper's. And, of course, she now writes for the institution conservative media critics revile most of all: *The New York Times*. Yet she is infamous for her credulous reporting hyping the Saddam threat. (Not long before the Bush administration got into trouble for paying reporters to pass along its propaganda breathlessly, Miller was basically doing it for free.) That doesn't fit the media conspiracy theories. Nor does the behavior of her supposedly anti-Bush editors at the *Times*, who (unlike Cooper's superiors) refused to relinquish Miller's notes, defending her pledge of confidentiality all the way to the jail cell she now occupies.

And look who else was standing behind Cooper and Miller as imprisonment loomed: liberal opinion writers at places like *The Washington Post*. While some of these writers did so out of personal loyalty to Cooper or Miller, they were also putting professionalism over partisanship They hardly suggested letting Rove off the hook, but they promoted their journalistic principles even though it meant protecting him.

So where's the liberal media conspiracy? Oh, right, back in the press briefing room, where reporters were pummeling poor Scott McClellan. But when even Fox's correspondent gets on the bandwagon, maybe it's a sign of what's really driving this story: not a partisan or temperamental crusade to bring down the president, but a recognition that administration officials committed sleazy, possibly illegal, acts for which they should finally be held accountable.

JONATHAN COH

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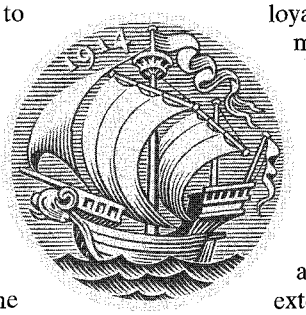
The Fever

WHATEVER ELSE IS AT stake in President Bush's nomination of the successor to Supreme Court Justice Sandra Day O'Connor, the character of American conservatism certainly is. The sober truth is that, barring a scandal or an act of Intelligent Design, the president will get the judge he wishes: He owns the executive and legislative branches of government, and the Democrats have only the under-inflamed leadership of Harry Reid and the over-inflamed advertisements of MoveOn upon which to rely. (The spots display ancient images of Robert Bork, as if it is shrewd to gamble on the historical memory of the average American. Ask many Americans who Bork is and they will say an Icelandic pop singer.) The power belongs to the Republicans. But with power comes the inebriation of it, and the misuse of it, and the sanctification of it—and the Republicans under Bush are not displaying any special immunity to these errors. The question, Who will succeed O'Connor? is therefore the same question as, What is the condition of American conservatism? And the conservative frenzy that followed O'Connor's resignation is a troubling sign—troubling for liberals, obviously, but troubling also for the many conservatives who have not yet taken leave of their senses.

It is well-known that Bush is not a creature of the big tent. He reveres, strategically but also psychologically, his base. But there is little peace in his small tent. The many elements of contemporary conservatism no longer comport so easily with one another, except in their loathing of liberalism. The president's own philosophy is increasingly inconsistent and situationist: Whatever one thinks about the war in Iraq, it was not the Burkean thing to do; whatever one thinks about the pharaonic deficit, it is not what Ronald Reagan had in mind; whatever one thinks about gay marriage, forbidding it is not the libertarian way; and so on. It does not help that the president's supporters like to call him a revolutionary, which was supposed to have become forever a term of disgrace in the world after totalitarianism. But the president enjoys the idea of himself as a radical, and he has himself to blame if he is finding more and more radicalism on the right. The wink at extremism may have been useful electorally, but the election is over. And, with sanctimonious stunts like flying to Washington in the middle of the night to intervene in Terri Schiavo's destiny, Bush feeds the beast; and the beast is panicked and ravenous.



The immediate right-wing assault on Alberto Gonzales was a measure of the mood in the Bush base. For these people, it is not enough that they control two branches of the federal government. They want them all. There remains the problem of the third branch, and its outrageous refusal to conform to their doctrines and their superstitions. Why should Truth have time for the separation of powers? These conservatives, many of them militant Christians, harbor a particular hatred for the judiciary, about which they often speak with rhetorical violence. The stronger they get, the weaker they feel. Spiritually, they are always victims. Never mind that almost every significant judicial victory for liberalism is steadily and skillfully turned into a significant political victory for conservatism. Consider only the Supreme Court's recent ruling in *Kelo* v. *New London*, the takings case in Connecticut. From the wild discussion of the case in the press, you would think that the Supreme Court had restored the Courts of Star Chamber and abolished private property in America. In fact, the ruling was a reasonable interpretation of the Fifth Amendment that is supported by a tradition of jurisprudence. But "eminent domain" has now become a potent right-wing curse, like "gun control" and "choice." Laws are being drafted in various legislatures to put an end to this new affront to liberty. The fever runs higher and higher.

So, when Bush chooses among candidates for the Supreme Court, he will be choosing among conservatisms. It will be a moment of right-wing reckoning. For all his friends and all his loyalties do not add up. Bush must endorse the fever or repudiate it. If liberals are lucky, conservatives will continue to denounce Gonzales and provoke the president into nominating him. He is a mediocre figure who authored some disturbing extenuations of the administration's twisted ideas about torture and war, but he is not fevered. Whether or not Gonzales is Spanish for Souter, it is enough that it may be Spanish for O'Connor. She was no Brandeis, but, in this troubled age of perfect certainties, she looks increasingly like a heroine of reason, which, once upon a time, was the foundation of American freedom. ■

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NOTEBOOK

FOX ANCHOR, TIME TO BUY . . . MICRO-TREMORS TELL NO LIE

DAY TRADER

WHEN BRIT HUME DEPARTED ABC News for Fox News back in 1996, he eagerly anticipated that his new network home would provide "freedom on the air to report and analyze in a way I've yearned to do." Yes, years of confining himself to relatively cogent, tasteful commentary had left Hume pining for an outlet for his other thoughts—the irrelevant, the ideological, the inane. Finally, they, too, would be broadcast.

So, nearly a decade after joining Fox, it's nice to see that Hume is still enjoying his "freedom." Just hours after a series of bombings ripped through the London transit system last Thursday, Hume struck a thoughtful pose and mused that, upon discovering that the tragedy had sent stock markets sinking, his "first thought" was, "Hmm, time to buy." Right. Because, if he didn't immediately dial his broker, the terrorists would win.

Of course, the freedom that Fox grants its on-air personalities is not for Hume alone. Fellow anchor Brian Kilmeade also felt uninhibited enough to note that the bombings marked "the first time since 9/11 when [the British] should know, and they do know now, that terrorism should be number-one." The London bombings: financial boon for Brit Hume; stern warning for wayward Brits. But only Fox News is free enough to tell you that.

THE LESSONS OF NETANYA

GIVEN THE ATROCITY IN LONDON, let's now put the ordinary life of Israel and Israelis in correct perspective. The suicide bombing in Netanya, a medium-sized city on the Mediterranean, was the one hundred sixty-eighth successful attack since the second intifada began barely four and a half years ago. As of this writing, four were killed and more than 90 were wounded, 14 of them critically. God

Brit Hume

only knows how many more hundreds of such attempts were aborted because of the checkpoints and protective fences so despised by various international organizations like the United Nations and the European Union, which has, in these last days, had the temerity to offer itself once again as honest border police between Gaza and Israel after the impending withdrawal. No, Javier Solana, you are not welcome, and for good reason. There was at least one unsuccessful suicide attack on the same day as the Netanya outrage. The fact is that Mahmoud Abbas and the Palestinian Authority have done virtually nothing to curb the terrorism since they have refrained from arresting the terrorists. There hasn't even been much brave talk—only signs of weakness or unwillingness that have exasperated General William Ward, who is serving as the American security coordinator.

This particular murder of Jews eerily echoes the 1972 Munich massacre, because, as it happens, Israel is right now hosting the seventeenth Maccabiah Games, the so-called "Jewish Olympics," and Netanya has been an unofficial home to this year's Maccabiah Olympic village. Along with 7,000 athletes from 55 countries, many past Jewish Olympians, from Israel and elsewhere, are in attendance at the Maccabiah, including Mark Spitz, who broke seven records and won seven golds at Munich. Spitz was the real hero of the 1972 Games, its rebuff to the murderers of Munich. The camaraderie of excellent Israeli and Jewish athletes, as expressed in these quadrennial Maccabiah Games, is another triumph of Zionism in its aspiration to provide a normal life for its people. It is no wonder that these Palestinian murderers, whose nationalism has accomplished so little, would make them a target.

As General Moshe "Bogey" Yaalon was about to leave his post as chief of staff of the Israel Defense Forces, he gave an interview to Haaretz last month in which he said, "They will not forgo the suicide bombings. The suicide bombings and the Qassam rockets have something in common: They bypass the [Israeli army]. They are means of bypassing Israeli military might and striking at civilian society." So when will terrorism finally end? "Leave Tel Aviv and things will be completely quiet." This is the proposition that is being tested by the Gaza withdrawal. For, if terrorist attacks persist, Israel will not make other serious concessions to the Palestinians. And that will mean the end, not of Israel, but of the Palestinian state.

THE TRUTH MAY SET YOU FREE, BUT IT WILL COST YOU $9,995

RECENTLY, AS WE WERE UNWINDING with *DefenseTech.org*—well, this is Washington—we read that the Pentagon has been using the latest in lie-detection technology: "voice stress analysis." It's based on the idea that a person, when

DAVID COWLES

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fibbing, emits a certain frequency perceptible only to the keenest of auditory instruments—like the Computer Voice Stress Analyzer™. Its manufacturer, the National Institute for Truth Verification (NITV), boasts that the device is "utilized by the US Department of Defense in the global war on terrorism." And the hardware is simple: "The CVSA™ uses only a microphone plugged into the computer to analyze the subject's responses." Yet its sensitivity to microtremors remains unmatched. (Microtremors: the "tiny frequency modulations in the human voice." As NITV explains, "When a test subject is lying, the automatic, or involuntary nervous system, causes an inaudible increase in the Micro tremor's [sic] frequency.")

We like the Computer Voice Stress Analyzer™. Sure, there's the occasional dissenter, such as Washington University psychologist Mitchell Sommers, who conducted a study on voice-stress analysis and recently told the *St. Louis Post-Dispatch*, "It's beyond my imagination why anyone would buy one of these devices." But perhaps Sommers is just jealous because he can't afford one. (The CVSA starts at $9,995.00.) Best of all, it gives us hope that THE NEW REPUBLIC's project to unload our McClellan Press Gaggle Stonewall Verbalizer™ will bear fruit. It's a Dell desktop CPU onto which is glued what might—to some eyes—resemble a Magic 8-Ball. You simply pose a question to the MCCPGSV™—such as, "Does the president continue to have confidence in Karl Rove?"—and gently flip over the CPU once or twice. So far, it has yielded the following answers:

Ask Again Later
Cannot Predict Now
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Concentrate and Ask Again
Reply Hazy, Try Again

Starting price: $9,995. Chance of selling it to the government: Outlook Good. ■

TNR.commentary

&c.

PROTECTING THE HOMELAND, PART I: On a recent flight from California, I lost track of the number of times the captain warned us that we would be confined to our seats for 30 minutes before arriving at Washington National. As we neared the East Coast, the frequency of the warnings about the 30-minute rule came to resemble a Dick Clark broadcast on New Year's Eve. ("We're just minutes away.") Well, soon, pilots can save their breath. Wednesday, Homeland Security Secretary Michael Chertoff announced the imminent end of the 30-minute rule. "RULES FOR REAGAN AIRPORT PASSENGERS TO BE EASED," celebrated *washingtonpost.com*, as if the war on terrorism had come to a close.

Actually, the rule change is one of the sillier aspects of what, upon initial review, seems to be a generally right-headed policy proposal. The biggest challenge facing the Department of Homeland Security (DHS) is managerial. To that end, Chertoff's agenda wisely adopts some of the reorganization recommendations of a 2004 report by the Heritage Foundation and the Center for Strategic & International Studies. Key among these is the creation of an undersecretary for policy. Chertoff also made some gestures toward improving infrastructure security, particularly for borders and ports, a need often harped upon by Democrats. But an assessment of whether the proposed initiatives are likely to make us safer will have to wait until details are announced in the coming weeks. And, of course, all praise should be recanted if the White House is reluctant to push for money to back up press conference promises—a tendency all too common in this administration.

—Marisa Katz

PROTECTING THE HOMELAND, PART II: In the aftermath of the London bombings last week, the *New York Post* wasted no time making vicious partisan attacks—on alleged partisan attacks. Said the *Post*:

> Democratic attacks on the president, his party and his war policies come in two basic categories—essentially self-serving and insidiously subversive.
>
> Sens. Chuck Schumer and Hillary Clinton indulged in a little of the former yesterday evening—indecently demanding even *more* money for New York before all of the bodies in London had been identified.

But what's so indecent about an attempt by New York's senators to obtain adequate funding for transportation security in the wake of an attack that could easily have been carried out on the Big Apple's subway system?

This is especially true when one considers that, just last month, a Senate committee voted to cut spending on mass transit security, from $150 million for the current fiscal year to $100 million for the next one. Since the London attacks, Senator Richard Shelby has proposed adding $1 billion to the transit appropriation; Judd Gregg, chairman of the Appropriations Committee, merely wants to double it to $200 million. Both senators are Republican; neither is from New York. So, clearly, there is some legitimate, nonparochial debate taking place on the subject. Alas, for the *New York Post*'s editors, when it comes to protecting the homeland, it seems that less is more.

—Ben Adler

DIVINE INTERVENTION: The July 7 *New York Times* has an op-ed hashing out what the Catholic Church thinks of all things Darwinian. The author, Christoph Schönborn, is a preeminent Vatican scholar and, incidentally, one of the cardinals who was favored for the papacy after John Paul II died. He's also, as I've previously pointed out, considered something of a liberal.

Which is why it's strange to see Schönborn get so prickly about claims of the Church's "supposed acceptance" of evolution. Schönborn tries to clarify the Church's position this way:

> Evolution in the sense of common ancestry might be true, but evolution in the neo-Darwinian sense—an unguided, unplanned process of random variation and natural selection—is not.

It may very well be true that some proponents of natural selection believe the process obviates the existence of a creator. But it is very slippery logic to assume that a science that proclaims "random variation" necessarily eliminates God from the equation. This tenet is not at all obvious, especially since many religious people—including many Catholics—believe that divine planning is located at a macro level. The Church, which has long engaged in agonized investigations into the role of human free will in the world, should hardly be so quick to dismiss the possibility that there could be both a God and natural selection. *—Keelin McDonell*

TNR ASSISTANT EDITOR MARISA KATZ AND REPORTER-RESEARCHERS BEN ADLER AND KEELIN MCDONELL ARE GUEST-BLOGGING &C. YOU CAN READ MORE OF THEIR POSTS AT WWW.TNR.COM

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Wal-Mart comes to Washington. Store Lobby

BY CLAY RISEN

On April 5, Wal-Mart did something that would have been almost unthinkable even a year ago: It held a press conference. After decades of rapid growth, the retail giant has recently experienced a wave of activist ire and bad p.r., from campaigns to block new stores to lawsuits over its lower-than-living-wage wages. The press has lapped it up, which is what led the formerly press-shy company to invite several dozen reporters to an Embassy Suites hotel near its corporate headquarters in Bentonville, Arkansas, to be lectured for two days by a bevy of Wal-Mart representatives, including CEO Lee Scott.

But Scott's team wasn't the only group talking Wal-Mart. In a scene reminiscent of the spin alleys set up outside the presidential debates last fall, after each session, representatives from Wake Up Wal-Mart, an anti–Wal-Mart campaign backed by the United Food and Commercial Workers (UFCW) union, were waiting to give their own take, including statements from the group's director, Paul Blank. The spin room worked: Blank appeared in almost every media account of the event. The talk at the event was about wages and health care, but the tactics—the damage-control press conference, the post-speech spin—were more Beltway than Bentonville. For a brief moment, one could be forgiven for confusing an Arkansas hotel with the halls of Capitol Hill.

Until recently, the battle against Wal-Mart—from unionization drives to anti-sprawl initiatives—took place exclusively at the local level. But, during the last year, it has matured into a national fight. And the campaign hasn't just gone national—it's gone to Washington. Virtually overnight, both sides have been taken over by campaign-hardened staffers and Beltway superlobbyists, who deploy tactics taken straight from political playbooks even as they insist that the Wal-Mart battle is still a "grassroots" effort. The "Washington-ization" of Wal-Mart, in turn, is transforming the company into a campaign issue—one that will likely figure heavily in the national elections in 2006 and 2008.

When Wal-Mart became a major blip on labor's radar screen in the early '90s, the obvious answer was, of course, to organize. But organizing retail is different from organizing, say, a factory. Even large stores require much less capital than industrial plants, a fact that allows Wal-Mart to easily shutter upstart stores or departments (in 2000, for example, when the UFCW organized the meat-cutting department of a Texas store, Wal-Mart closed its meat-cutting departments nationwide two weeks later). Not that many stores have ever gotten to that point. Wal-Mart—which is the nation's largest private employer and the world's largest company (with annual revenue that exceeds the GDP of Sweden)—trains its managers in anti-union tactics and, as a last resort, even dispatches anti-union response teams. "Straight-up organizing in this country is difficult enough under the law," says one UFCW representative. "And, when you're going up against a nation-state company, it doesn't behoove you to go after one store at a time."

Soon after Joe Hansen took the UFCW helm a year ago, the union decided to freeze its Wal-Mart organizing activities altogether and take what, in many ways, is the mirror-image approach. Instead of disparate, store-specific drives, it would concentrate its efforts in Washington, using Internet-age campaign tactics and drawing staff from the city's abundance of savvy politicos. In April, the union announced Wake Up Wal-Mart, a Washington-based campaign led by Blank, Howard Dean's former political director. (Chris Kofinis, the former deputy policy director for Wesley Clark's primary campaign, is its communications adviser.) Meanwhile, at the same time Wake Up Wal-Mart appeared, the Service Employees International Union (SEIU) helped to launch another effort, Wal-Mart Watch. Like Wake Up Wal-Mart, Wal-Mart Watch has attracted a coterie of bold-faced campaign names, including John Kerry's former campaign manager Jim Jordan (officially a partner at the lobby shop Westhill Partners), former Democratic Senatorial Campaign Committee Executive Director Andrew Grossman, and the former deputy director of research at the Democratic National Committee (DNC), Tracy Sefl. (The AFL-CIO, which is the umbrella organization for both UFCW and SEIU, has its own Wal-Mart operation, run, until recently, by Ellen Moran, a DNC veteran.)

Wal-Mart was already of interest in Washington, not only because of a series of federal lawsuits and investigations, but also because Kerry and other candidates had made it a symbol for the shortcomings of corporate America. So it's little surprise that Wake Up Wal-Mart—which works closely with Dean's Democracy for America—and Wal-Mart Watch have copied the top-down grassroots model that Dean championed and that other campaigns quickly adopted. They blog, organize local meetings, and use their websites to recruit local organizers; meanwhile, as the Bentonville press days showed, fast-response spin, slick daily press releases, and mass communications to legislators are now standard operating procedure. "When it comes to public education, the skills developed in campaigns are the skills needed here," Blank says.

Sam Walton, Wal-Mart's founder, famously disdained Washington and shunned the press. As a result, under his direction and even long after his death, Wal-Mart kept out of the Washington game. As recently as 1998, for example, it spent less than $50,000 on federal lobbying, a miniscule amount compared with outlays by other top-ten U.S. companies. In the late '90s, at

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the urging of Senator Trent Lott, it set up a small government relations office and opened the PAC spigot a bit, but its 2000 givings didn't even place it among the top 100 donors. "They used to be nowhere," says Larry Noble, executive director of the Center for Responsive Politics. Which was fine with Wal-Mart. Even with Lott's prodding, the company saw little need for anything more. On issues like free trade and wages, it was well-represented by organizations like the Retail Industry Leaders Association and the National Association of Chain Drug Stores. And the problems it did have—union drives, opposition to store openings—were strictly local ones, with little need for a national strategy. By the beginning of 2004, the Washington office had expanded by exactly three lobbyists.

That picture has changed drastically over the last year. Partly in response to growing public antipathy and the change in union strategy, it has greatly expanded its Washington office. It has hired several new lobbyists and replaced its government affairs chief with Lee Culpepper, the former head lobbyist for the National Restaurant Association and a key player in backroom GOP politics (among other things, he was instrumental in organizing support for John Thune, the conservative Republican who unseated Tom Daschle). And it has quickly developed a network of well-connected outside lobbyists; according to lobbying disclosure records, it has retained more than a dozen of them, including two Bush pioneers, two former staffers for House Majority Whip Roy Blunt, Tennessee Representative Harold Ford Jr.'s former chief of staff, and George Koch, father of George W. Bush's brother-in-law.

The company has boosted its campaign spending as well. Giving about 80 percent to Republicans, it laid out $1.67 million in the 2004 cycle, more than triple its 2000 spending, and far more than other Fortune 500 leaders. "It gives you an idea that they're a big player," Noble says.

What's more, the Walton family, which still controls about 40 percent of the company, has quickly become a major force in Washington in its own right. The Waltons gave millions to conservative candidates and groups in 2004, including $2.6 million to Progress for America, a GOP 527 organization. Aubrey Rothrock III, a partner at star lobbying shop Patton Boggs, works for both the Walton family and Wal-Mart. Overall, according to *USA Today*, the Walton family spent $3.2 million on lobbying, candidates, and conservative causes during the 2004 cycle, more than twice what it spent in the previous two elections combined. Notes Noble, the family and company "are often seen as a package. Together with Wal-Mart, they are quite a formidable machine."

WITH BOTH SIDES pursuing Washington strategies—and with Washington politicos starting to take notice—it's almost a foregone conclusion that Wal-Mart will become an issue in the next elections. For one thing, as Kerry found last year, the company makes a great stand-in for the issues that many Democrats want to focus on: Health care, wages, and offshore outsourcing. "They will be held up as bad guys in '06 on particular issues," says Jennifer Palmieri, a 2004 presidential campaign veteran now with the Center for American Progress. "They're Democrats' best talking point on why we need more progressive policy."

Indeed, the attacks have already begun. In May, 51 Democratic members of Congress signed a letter calling on Wal-Mart to address accusations of gender discrimination. And, late last month, Senators Ted Kennedy and Jon Corzine and Representative Anthony Weiner held a press conference—organized by the UFCW—to introduce a bill requiring states to make public the number of employees at large companies who are on government health care. "Part of the plan," said Weiner, "is to embarrass companies like Wal-Mart." Added Kennedy, "This is the first step, but it certainly will not be the last."

Actually, it's not the first—similar legislation has already been introduced in several states, seeding the sort of negative publicity that Democrats can draw on when going after the company next year. This spring, Maryland passed a bill requiring the company to spend more on employee health care, which Republican Governor Bob Ehrlich then vetoed. Baltimore's Democratic Mayor Martin O'Malley is running against Ehrlich in the 2006 election, and there are signs that the Wal-Mart bill will be a central part of his campaign.

Then there's the fact that so many of the people currently working for Wake Up Wal-Mart and Wal-Mart Watch, as perennial campaign vets, are likely to sign up with candidates over the next six months; in doing so, they will naturally push their bosses to take a strong line against the company. "I do think a lot of the values embodied in our fight are values you see in important campaigns," says one such staffer. And Wal-Mart's emergence on the national political scene is a silver lining to the unions' frustrated organizing efforts. "I'm not sure anyone believed we were going to organize in that way, but we were learning what the company was like," says one union veteran. That experience, in turn, will make it easier when the UFCW, the SEIU, and other groups push for anti–Wal-Mart tickets next year.

Finally, the company's newfound Washington presence, ironically, could end up hurting it politically. With most of Wal-Mart's lobbyists coming from Republican ranks—and more than 80 percent of its contributions going to the GOP—Democrats will have an easy time linking their opponents to Wal-Mart's misdeeds. "All the money in the world isn't going to change the facts," says Blank. "It's their business decisions that are coming back to haunt them."

After the Kennedy-Corzine-Weiner press conference, reporters were met by UFCW's Hansen and representatives of Wake Up Wal-Mart, ready with sound bites about the "Wal-Martization of our economy." But, this time, the company was ready, and Hansen and Co. found themselves competing for ink with a team of company flacks ready with their own spin. "They're playing catch-up," insists Palmieri. And, with the 2006 campaign season already getting underway, they're going to have to. ■

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London Dispatch

Sides of the Isle

BY DAVID PRYCE-JONES

THE BRITISH, ACCORDING to a familiar stereotype, are slow to react. Their immediate steadfastness in response to the terrorist attacks in London last week has certainly been remarkable, not to say magnificent. At present count, at least 52 people were killed and many were injured, more than 100 of them seriously, even critically. Yet, by nightfall on Thursday, the city was going about its business more or less normally.

But there is reason to fear that Great Britain may not really be returned to normal life—that its social fabric may not be as intact as it appears, at least in one crucial regard. The attacks of July 7 threaten to push beyond the breaking point already strained relations between Britain's large Muslim population and the working-class whites with whom it shares many of the nation's impoverished industrial centers. These Muslims are struggling with how to assimilate while retaining essential elements of their cultural and religious heritage. Many of them are easily convinced by the arguments of radical Islamist preachers. (In fact, the police now suspect that four Muslim men, all born in Britain and inspired by, if not directly linked to, Al Qaeda, carried out the bombings.) Meanwhile, the Muslim community's white, working-class neighbors are suspicious and resentful of the newer arrivals living among them. This juxtaposition creates vast potential for radicalism—and violence—on both sides.

Unfortunately, misguided British government policies that simultaneously make the country a haven for Muslim extremism while stoking white, working-class resentment with their perceived favoring of the larger Muslim community only exacerbate this problem. In the United States, after the September 11 attacks, there were few anti-Muslim incidents. But, on the day after the London carnage, the inevitable anti-Muslim backlash began. Among a number of confused incidents, a mosque in Leeds is believed to have been firebombed. This suits the Islamists perfectly, allowing them to draw more to their ranks as jihad becomes a reality, and it won't stop until the government reverses course.

THE BRITISH PEOPLE know that they are the targets of Islamist hate. They also know that Britain offers refuge for all sorts of Islamist organizations. Hamas, Hezbollah, and Hizb Ut Tahrir are tacitly allowed to spread their pro-terrorism gospel, even though the former two are officially banned. These groups have found a secure base and hinterland in which to implant themselves. In Britain, they see a population of more than one and a half million Muslims, the majority from Pakistan and Bangladesh, on the whole pious people, primarily out to better themselves. The natural instinct of these immigrants, almost certainly, is to assimilate with English society, or, if that seems too demanding, at least to integrate.

The younger generation, born and educated in Britain, proficient in English, would generally subscribe to assimilation, or at least integration. But discomfort remains. In particular, a code of conduct enshrining the inferiority of women is a barrier between Muslims and the British, one likely to remain insuperable for another generation or two. Until this issue is resolved, most young Muslims remain unsure whether their primary allegiance is to Britain and its values or to some country of family origin with quite different values. The Islamists invite the potentially alienated to reject Britain and all its works, and to adopt instead the identity of jihad and the hate that goes with it.

There is something on the order of 1,200 mosques in the country. All serve as community centers, and only a few are in the hands of extremist imams. The most notorious imams—Abu Hamza and Abu Qatada, both charged with crimes in Britain and abroad—have finally been taken into custody. They and their ilk act as recruiting officers for jihad. Sheik Omar Bakri Muhammad, a Syrian, part gangster and part buffoon, claims to have disbanded his extremist group, known as Al Muhajiroun. He incites his followers with declarations like, "Al Qaeda and all its branches and organizations of the world, that is the victorious group, and they have the emir [Osama bin Laden], and you are obliged to join." One follower, a young social worker in Luton by the name of Abdul Haq, recently told the *Evening Standard* something menacing and prophetic: "As far as I'm concerned, when they bomb London, the bigger the better. I know it's going to happen because Sheik bin Laden said so. Like Bali, like Turkey, like Madrid—I pray for it, I look forward to the day." Monitoring such threats, the intelligence services have been issuing regular warnings that a terrorist attack was a certainty, and the only point of doubt was when and how it would happen.

Under Islamist influence, the level of violence has been rising slowly but surely. As of March, 732 people have been arrested under the Terrorism Act, and, of these, 259 were charged with criminal offenses, though only 21 have been convicted. Kamel Bourgass was one of the latter. A 31-year-old Algerian, an illegal immigrant, he was found to have set up a chemical weapons laboratory in an apartment in North London, and, at the moment of his arrest, he stabbed a policeman to death and wounded four others. Seven British Muslims have been captured in Afghanistan and detained in Guantánamo. Several British Muslims have attempted suicide-bombing missions in Israel, at least one successfully, and others have been reportedly killed fighting with Abu Musab

David Pryce-Jones is a senior editor at NATIONAL REVIEW. *His most recent book is* THE CLOSED CIRCLE: AN INTERPRETATION OF THE ARABS.

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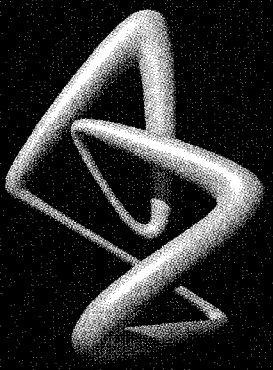

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Zarqawi in Iraq. Omar Sheik, responsible for beheading Daniel Pearl in Pakistan, was born and educated in Britain, a student of the London School of Economics, no less. Those recruited to Islamism are not the poor and disinherited, but, on the contrary, those whose intelligence and social advancement allow them to submit to the luxury of an identity crisis.

The response of those in public positions has been mostly feeble or inappropriate. The Muslims and the locals in the half-ruined industrial towns of the Midlands are on a level footing when it comes to unemployment, welfare, and education, but government policy is perceived in some quarters as favoring Muslims in measures like building community centers and sports facilities, and forcing books on Islam (but not on any other religion) into schools. In fact, there are now seven state-run schools exclusively for Muslims. These schools are attended by fewer than 2,000 students (and some Protestant and Catholic schools have long received state funding), but their creation has aroused resentment and concern. David Bell, the chief inspector of schools, recently worried that "young people are being educated in faith-based schools, with little appreciation of their wider responsibilities and obligations to British society."

INEXORABLY, THOSE WHO privilege Muslims on the one hand, and Islamists on the other hand, are combining to shift public opinion toward the counterresponse of violence, which is to say fascism. Wedded to their parliamentary democracy, the British have always rejected foreign political imports like communism and fascism. No fascist party member has ever won a seat at Westminster, and today's fascists, the British National Party (BNP), fare no better. Under the impact of rising Islamism, however, and invigorated by the well-meant but foolish patronizing of Muslims by the authorities, the BNP has now acquired a few seats on local municipalities. In the last European elections, the BNP received over 808,200 votes, an astonishing protest vote, as well as a portent. Some of these new fascists are capable of argument, but most of them resort to the fist, the boot, and the petrol bomb. Nobody has been killed so far in the BNP-inspired race riots in cities with substantial Muslim populations, such as Burnley, Oldham, Derby, Tipton, and Bradford, but mosques and shops and Muslim properties have been vandalized. They are creating a sense (one that played a role in the recent general election) that the country has lost control of its borders and that immigrants, whether legal or illegal, are becoming "an enemy within."

British Muslims are caught between a rock and a hard place. The number who throw their lot in with the Islamists might be infinitesimally small, but even that is enough to arouse much fury and contempt for them at the street level. In order to be free and equal citizens, they need better leadership and a more realistic government. In time, this will happen. In another familiar stereotype, the British public will ultimately go in for fair play. But the time before that day arrives has been made longer still by the terrorist outrage in London. ■

Karl Rove's lawyer screws up.

Word Blossom

BY RYAN LIZZA

IN AT LEAST one Washington law firm this July, the summer associates are earning their keep. Their boss is one of the lawyers involved with the Rove-Plame scandal, and he's keeping them busy with a surprisingly thorny task: Tracking the public comments of Robert Luskin, Karl Rove's attorney. Over the last two weeks, Luskin has flummoxed Washington's Fourth Estate with spin and legalisms. He has embarrassed reporters who ran with the cleverly worded denials he dished out. He has contradicted himself, sometimes within the same news article. He may have accidentally paved the way for Matt Cooper's Wednesday grand jury testimony about Rove. In short, he has made life difficult for those summer associates. "Every day," says the lawyer involved in the case, "I have my associates put together a chronology of the things Luskin is saying about Karl Rove. He's just all over the place. Even in the last few days, they are not consistent."

Every Washington scandal eventually shifts from the political realm to the legal realm, a moment when those being investigated retreat from public view and their lawyers step forward. It is a make-or-break moment for the Beltway defense attorney, and one of the reasons that people like Luskin relish such high-profile cases. But Luskin is stumbling out of the gate. Not since William Ginsburg, Monica Lewinsky's hapless first attorney, has a lawyer had such an inept public debut. Legal veterans of scandals past are scratching their heads. "He's publicized his client more than his client might like," says one of the lawyers central to the Lewinsky drama. "I've been surprised by the disclosures. I don't know of any strategy behind it, and a lot of people are looking at it the same way."

OVER HIS 25-YEAR legal career, Robert Luskin has defended a colorful cast of characters, including a drug kingpin, several figures on the fringes of the Clinton scandals, and, most recently, the Kingdom of Saudi Arabia. But scoring Rove was a coup. Luskin is an unlikely choice for a Republican, let alone Rove. In fact, during the 1990s, a wide swath of the conservative movement spent a good chunk of its time trying to destroy his reputation. For the last ten years, Luskin has served as the in-house prosecutor for the Laborers' International Union, where he has been charged with fighting corruption. The right was miffed that the Clinton administration let the Laborers clean house on their own rather than under the tutelage of the Justice Department, as was done with the Teamsters. One gadfly conservative organization, the Na-

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tional Legal and Policy Center (NLPC), turned discrediting Luskin into its own personal crusade. They produced a highly unflattering 13-page report that set off a cascade of critical stories and editorials in the conservative press. Under the headline "LUSKIN'S TIES TO THE NEW ENGLAND/PATRIARCA CRIME FAMILY," the report documented a fishy episode wherein Luskin was forced to return $245,000 in legal fees that he received from a client named Stephen A. Saccoccia, who was sentenced to 660 years in prison for laundering South American drug-cartel and mob money. A U.S. attorney, accusing Luskin of "willful blindness," reasoned that, when Luskin started getting paid with solid gold bars (he ultimately received 45 of them, worth $505,125) and wire transfers from Swiss bank accounts, he should have known the payments were from illicit sources, especially since his client's crimes involved gold bars and wire transfers from Swiss bank accounts.

Many of the other anti-Luskin criticisms concerned alleged conflicts of interest stemming from his defense of several clients wrapped up in Clinton-related scandals. Luskin soon became a target of *The Washington Times*, *Investor's Business Daily*, *The Weekly Standard*, *National Review*, and *The American Spectator*, each arguing a version of the NLPC line that he was ethically unsuited for his job at the Laborers' Union.

But, by the end of the '90s, Luskin had established himself as a top-tier defense attorney. He abandoned his boutique law firm for the gilded hallways of Patton Boggs. Still, big-name Washington lawyers say he's not really part of the small clique of attorneys that seem to pop up during every investigation—people like Jacob Stein, Abbe Lowell, Plato Cacheris, Robert Bennett, and Reid Weingarten. "Let's just say that I haven't been in a case where he represented anyone," sniffs a member of Washington's legal royalty.

Luskin has represented Bush's strategist for months, but it was only in July, when the extent of Rove's role in the Plame case emerged, that the lawyer became a Beltway star. Previous legal celebrities, such as Ginsburg, became famous for their addiction to the cameras. Luskin has become famous for his word games. It is no surprise when a lawyer resorts to technicalities and evasions to defend his client. What sounds like an absurd defense and bad politics in the public arena may make perfect sense inside the courtroom. But Luskin's comments seem to be legally inept as well.

The Harvard alum and Rhodes scholar first started getting chatty with reporters back in December. He told the *Chicago Tribune* that the only way for the prosecutor in the case, Patrick Fitzgerald, to establish a pattern of wrongdoing by the Bushies was for him to drag reporters into the grand jury. "I don't see how you can conduct a leak investigation in a sensitive way," he said, sounding oddly detached from the case for someone whose client's fate was at stake. "You have to talk to everybody." Perhaps he was just sucking up to the prosecutor, but it seemed bizarre for Rove's attorney to publicly endorse a prosecutorial strategy that was tightening the noose around his client's throat.

Luskin then went virtually silent for seven months. But, on Saturday, July 2, *Newsweek* posted an online story naming Rove as the source Cooper had kept secret for two years. In the piece, Luskin first unveiled Rove's new defense. The strategist "never knowingly disclosed classified information," and "he did not tell any reporter that Valerie Plame worked for the CIA," Luskin insisted. The first statement was standard legal obfuscation. The arcane statute making it a crime to blow a CIA operative's cover emphasizes that the deed must be done knowingly. Luskin's second statement seemed like a blanket denial. But, on July 9, when *Newsweek* revealed an e-mail between Cooper and his editor stating that Rove mentioned *Joe Wilson's wife*, rather than *Valerie Plame*, the press realized that it was actually a weasely Clintonism.

But, before that revelation, Luskin tried to snow every reporter he came across. In a July 3 story, he told *The Washington Post*, "Karl didn't disclose Valerie Plame's identity to Mr. Cooper or anybody else. ... Who outed this woman? ... It wasn't Karl." Maybe Luskin thought he was being technical and legalistic, but it's hard to see this statement as anything but a lie. For instance, one could say, "Karl Rove's lawyer accepted 45 gold bars worth $505,125 from a South American drug cartel." The statement does not actually mention Luskin's name, but even Luskin would have to agree it identifies him.

Luskin fed versions of the Rove-didn't-identify-Plame line to the Associated Press, the *Los Angeles Times*, and *The Wall Street Journal*, but, on July 6, he made what seems to have been a mistake. Cooper was headed to prison last Wednesday, but, when his lawyer picked up that morning's *Journal*, just one sentence after Luskin's now-familiar fib was a bonus quote: "If Matt Cooper is going to jail to protect a source, it's not Karl he's protecting." Cooper and his lawyer seized on that statement as evidence that Rove was willing to release the reporter from his pledge of confidentiality. In a phone call, Luskin acknowledged to Cooper's lawyer that the reporter was free to testify. If Luskin had kept his mouth shut, Cooper would have gone to prison and Rove might never have had to worry about him.

THIS EPISODE LAUNCHED an entirely new series of Luskinisms. Cooper publicly announced that his source had granted him consent to testify. Reporters naturally called Luskin to find out whether Rove was that source. No way, said Luskin. Rove had "not contacted Cooper about this matter," Luskin assured the *Los Angeles Times*. Get it? Rove didn't talk to Cooper. Their *lawyers* talked. What's bewildering about Luskin's evasion is that there was no legal rationale for it. After all, the prosecutor in the case knew exactly what had happened. When finally questioned by *The Washington Post* about this slipperiness, the lawyer was mum: "I'm not going to comment any further."

"I" might not have commented anymore, but "Luskin" continued to. In the course of one interview with the *Los*

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CHRONIC PAIN AND OPIOIDS

Debunking the Myths: Part 1

What is chronic pain?
Chronic pain is a progressive disease of the nervous system, caused by failure of the body's internal pain control systems. The disease is accompanied by changes in the chemical and anatomical makeup of the spinal cord. Chronic pain is a malignancy, in the sense that when it goes untreated, it increases in intensity and spreads to areas that weren't previously affected, damaging the sufferer's health and functioning.

Why treat chronic pain with opioids?
Opioids are substances naturally produced within the body to regulate pain. They are commonly known as endorphins, and recognized as producing the state of euphoria known as the runner's high. Chronic pain victims, who can't produce enough opioids on their own, often benefit from supplementation with pharmaceutical opioids.

What are the goals of treatment?
1. Lowering of pain levels.
2. Reducing suffering through restoration of functioning in life activities, as close to normal as possible.
3. Arresting and reversing the damage done by chronic pain to the nervous system and overall health of the patient.

Are opioids dangerous?
When taken as prescribed by your doctor, opioids are among the safest drugs available.

What about those "Oxycontin deaths" reported in the media?
Oxycontin, like other opioids, is safe for patients who take their medicine as prescribed. "Oxycontin deaths" occur in habitual substance abusers, not patients, and are usually the result of combining the drug with overdoses of alcohol and other drugs. These are deaths associated with Oxycontin, not caused by it, and they are not occurring in patients.

Will I have to take opioids for the rest of my life?
Opioids can be discontinued whenever they are no longer needed. Patients may recover from chronic pain, and return to active lives.

Will I get addicted, and how can I tell if I am?
Addiction is defined by the American Society of Addiction Medicine as continued use in spite of harm. Scientific research indicates that opioid addiction in pain patients is rare. If opioids make your life better by controlling pain, you are a pain patient. If they make your life worse, and you continue to use them, you may be an addict.

Will I have to take larger and larger doses to control my pain?
For most patients, their dose remains stable over long periods of time.

(continued in Part 2)

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Common Sense for Drug Policy
www.CommonSenseDrugPolicy.org www.DrugWarFacts.org
www.AddictInTheFamily.org
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Angeles Times, Luskin both refused to confirm or deny the authenticity of Cooper's e-mail to his editor *and* used its contents as evidence of Rove's innocence.

Next, in the same article, there was Luskin's curious statement that Rove "was sharing what he knew but with the specific understanding it would not be disclosed." Luskin emphasized this important point by noting that, in the e-mail, which, according to him, may or may not be real, Cooper said he was speaking to Rove "on double super secret background," a phrase that Luskin apparently believes is an actual level of confidentiality taught at the Columbia School of Journalism rather than a jokey reference to the movie *Animal House*. (Dean Wormer famously put the Delta boys on double secret probation.)

Luskin has, in fact, developed a whole new strategy based on the double super secret background nature of the Cooper-Rove interview, a strategy that rests on the fact that Luskin doesn't quite get Cooper's sense of humor. On Tuesday, the lawyer earnestly defended Rove in an interview with *National Review Online*. "Look at the Cooper e-mail," Luskin told reporter Byron York, ironically the same journalist who once trashed Luskin in a 1997 *American Spectator* piece. "Karl speaks to him on double super secret background." Call it the Dean Wormer defense.

I called Luskin to ask him about all this. But he never called me back. After his first two weeks in the spotlight, he doesn't seem to be talking to the press as much anymore, not even, it appears, on double super secret background. At least that will make life easier for those summer associates. ■

The Court and business.

Social Selection

BY JONATHAN CHAIT

WE'VE ALL HEARD many times how Republicans are beholden to their base on social issues. But aren't Democrats just as beholden—maybe even more beholden—to *their* base on social issues? Consider the way that Democrats have approached the fight over the Supreme Court vacancy.

In the wake of Sandra Day O'Connor's retirement, Democrats almost immediately settled upon a strategy of lionizing the departing justice and holding her up as a model for future appointees. This is true of elected Democratic officials. ("If [President Bush] is true to his promise, he will use Justice O'Connor as a role model," said Senator Barbara Boxer.) It is equally true of Democratic-affiliated interest groups. ("[Bush] can unite the country and consult with both parties in selecting a moderate, consensus nominee—someone like Justice O'Connor—or he can continue down the path he has taken with lower court nominees and name a controversial candidate who will further divide the nation," asserted Nan Aron, president of the Alliance for Justice, the preeminent judicial lobby.)

In the broad sense, it's true that O'Connor is a moderate. But the particular nature of her moderation makes the Democrats' lionization of her revealing. O'Connor famously voted to uphold *Roe* v. *Wade* and has deviated from conservative orthodoxy on other social issues. But Supreme Court justices do not only rule on social policy. They also settle disputes between business and labor, consumers, and environmentalists. And here, O'Connor has compiled a staunchly pro-business record. It is a distinction Democrats ought to pay far more attention to in the coming battles over Supreme Court nominees. In vast areas of economic, environmental, and regulatory policy, a justice in the O'Connor mold would not be what the Democrats want.

O'CONNOR'S PRO-BUSINESS LEANINGS are not a secret. As *The Washington Post* reported shortly after her retirement, "[B]usiness lost one of its most important allies. Appellate lawyers and former clerks uniformly described O'Connor as sympathetic to the problems of business." She has repeatedly taken the side of defendants in product liability suits. In 1992, she wrote the majority opinion in *Gade* v. *National Solid Waste Management Association*, forbidding states from enforcing more stringent worker safety standards than those mandated by the federal government. She struck down a provision in the Americans with Disabilities Act that let disabled state employees sue for discrimination. O'Connor has actually taken a more pro-business stance than social conservative stalwarts like Antonin Scalia and Clarence Thomas. (For instance, two years ago, O'Connor joined a decision striking down a $145 million lawsuit against an auto insurance company, while Scalia and Thomas dissented on the grounds that federal courts cannot reduce awards granted in state courts.)

This is not to say that all of O'Connor's pro-business rulings were wrong. The point is that her lionization by Democrats says less about O'Connor than it does about the political disposition of elites, and especially liberal elites. These elites—donors, the media, business leaders, politicians, and strategists—are drawn from the ranks of the affluent and highly educated. People with high incomes and education levels tend to be more economically conservative and socially liberal than the population as a whole. The 2005 Pew survey of the electorate, for instance, found that large segments of the Democratic Party base oppose liberal positions on issues like gay marriage and the role of religion in public life. Similarly, large segments of the Republican Party base dissent from the conservative stance on questions like the minimum wage and private Social Security accounts.

Because these elites shape public opinion, there is a general tendency to identify political figures who tilt right on

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CHRONIC PAIN AND OPIOIDS

Debunking the Myths: Part 2

(continued from Part 1)

Will I get high, or lose control?
When opioids are taken on a regular schedule, tolerance quickly develops, and the psychological "high" goes away, leaving the user feeling completely normal. Long-term opioid users, as a group, have driving records for accidents and violations that are the same as everyone else's.

Will I hurt myself because I don't feel any pain?
No. Opioids improve functioning by reducing pain levels. They don't remove all the pain, or the ability to perceive new pain.

Will I become dependent?
You may. Dependence means that if opioids are abruptly discontinued you will have a physical withdrawal reaction, similar to having the flu. This reaction can be prevented by gradually tapering off the medication. Dependence is a physical phenomenon, not a sign of addiction.

What if I had a previous substance abuse problem?
This should not prevent a trial of opioids. Studies at Harvard Medical School and the University of Washington indicate that a past history of substance abuse has little or no predictive value for failure of opioid treatment. If you have current behavioral or substance abuse problems, you may appear to have trouble with opioid treatment.

Are there any side effects?
Constipation, nausea, itching, insomnia, and drowsiness commonly occur. All of these side effects can be successfully managed.

Will the medicine damage my liver?
No. Opioids occur naturally in the body, and are not harmful to any organ system. They can be taken safely for a lifetime, if necessary. Anti-inflammatory nonopioid medication, on the other hand, kill 16,500 patients each year through bleeding from the stomach, and are toxic to the liver and kidneys.

What is the correct dose?
The amount that allows optimal functioning is the correct dose. There is no upper limit to the dose of opioids that can be safely used, when the medicine is increased gradually.

Why won't my doctor prescribe enough medicine to control my pain?
He is too scared. As part of the War on Drugs, law enforcement is conducting a witch-hunt against pain doctors who prescribe opioids compassionately. Most physicians won't risk being targeted by law enforcement, because they have families to support. As a result, chronic pain sufferers have become non-combatant casualties in the war on drugs.

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economics and left on social policy as "moderate." In 1996, newspapers frequently referred to millionaire publisher and GOP presidential candidate Steve Forbes as a "moderate" because Forbes had implicitly endorsed abortion rights, despite the fact that Forbes was running on a platform that called for gutting the progressive income tax and much of the New Deal. By contrast, reporters and pundits almost never described 2000 GOP hopeful Gary Bauer—a favorite of the religious right—as a moderate, despite Bauer's frequent dissent from the conservative economic program.

O'Connor, in many ways, exemplifies this trend. Her social moderation and strong sympathies for business put her squarely in the center of the elite consensus. O'Connor's seminal 2003 opinion on affirmative action, for instance, took note of the many amicus briefings on behalf of the University of Michigan filed by business leaders supporting the university. (The general public, on the other hand, tends to favor strict race neutrality in university admissions.)

THE IDENTIFICATION OF O'Connor as both a moderate and a judicial ideal reflects the liberal tendency to boil all questions of ideology down to one's stance on abortion. As my colleague Jeffrey Rosen has written in these pages and elsewhere, in the long run, the most dangerous conservative legal offensive is not one against abortion, but rather one against government intervention in great swaths of the economy. (For a better explanation of this phenomenon, see Rosen's excellent *New York Times Magazine* cover story from April 17.) Right now, conservatives are further away from their economic offensive than they are from striking down *Roe*. But, if *Roe* is struck down, it would merely shift the battle over abortion to state legislatures. If conservatives eventually succeeded in banning the government from regulating things like worker safety and the minimum wage, on the other hand, liberals would have no legal recourse at all.

The Republican Party seems to have a more balanced view of these stakes. It's true that the most virulent judicial advocates on the right care most deeply about social issues. But business interests have been mobilizing for years to put their imprint on Bush's judicial selections. Business lobbies have raised millions of dollars to push for Bush's judicial selections, and they have provided the White House with analyses grading various candidates on their pro-business inclinations.

Liberals have to be choosy in how they deploy their very limited ability to influence the next Supreme Court pick. A justice in the Scalia mold would prefer to overturn *Roe*, but, on the other hand, Scalia has excoriated conservatives hoping to deploy judicial activism in the economic realm. To push for a replacement in the O'Connor mold is to side with upholding *Roe* above all else. You can see why this choice might make sense to the affluent social liberals who help run the Democratic Party and its affiliated activist groups. But it doesn't necessarily make sense for the liberal agenda as a whole. ■

The Court and law enforcement.

Police Powers

BY WILLIAM J. STUNTZ

SUPREME COURT APPOINTMENTS are like "Law & Order" episodes: The cast of characters changes, but the dialogue always sounds the same. Whoever the nominees are, the script for the inevitable confirmation battles has already been written. Abortion, church and state, more abortion, gay rights, and still more abortion—interest groups and senators are setting the table, and that's the menu. It's strangely disconnected from what the Supreme Court actually does and from the places where the justices really exercise power. If *Roe* v. *Wade* goes by the boards, abortion law will stay roughly the same. Nor will American life change much if the Ten Commandments start dropping off courthouse walls.

By contrast, another aspect of the Court's work affects lots of lives. The United States incarcerates more than two million people in its prisons and jails today, roughly seven times the number held in 1970 and five times the 1980 figure. For the past 40 years, the Supreme Court has helped shape the process that puts those men and women behind bars. When can police officers frisk suspects on the street or search their cars? When do police have to give *Miranda* warnings? How hard can they push suspects to confess—and how hard can prosecutors push defendants to plead guilty? How must juries be selected? Which sentencing procedures are permissible, and which ones aren't? Supreme Court justices answer all these questions and dozens more like them.

The answers matter enormously. Which means that the Supreme Court's most important job is not managing the culture wars. Regulating the never-ending war on crime is a much bigger task. Alas, it may also be the job the Court does worst.

CIVILIZATIONS DEFINE THEMSELVES by when, how, and whom they punish. Those choices are especially important in a society like ours, with a long history of both criminal violence and official racism. Forty-five percent of American prisoners are black. The imprisonment rate—the number of prison inmates per 100,000 people—stood at 482 in 2003. Among black males, the figure was 3,405. For black men in their late twenties, the number exceeds 9,000. Court decisions that help shape those numbers are vastly more important than the latest church-state fight.

And the justices *do* shape those numbers, both by what they regulate and by what they leave alone. Fourth Amend-

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ment case law makes it easy to justify police stops and frisks in the inner-city neighborhoods where many of those young black men live. In one recent case, a Chicago man saw a police van and ran. According to the justices, that was reason enough to seize him. The result in *Illinois* v. *Wardlow* sounds obvious to middle-class suburbanites. But, to people in neighborhoods like Wardlow's, running from the cops may be more a survival skill than a sign of guilt.

Another recent case, *Kyllo* v. *United States*, involved a defendant who was growing marijuana inside his house on Rhododendron Drive (no kidding) in Florence, Oregon. Using a thermal imager, officers discovered that one wing of the house was a lot warmer than the rest. Inside, they found more than 100 marijuana plants. The Supreme Court held that the thermal imager violated the defendant's rights. Decisions like *Wardlow* and *Kyllo* make it a good deal easier for the police to make drug busts on poor city streets than in the suburbs.

That's not all. Criminal trials have grown so cumbersome (and budgets so strained) that hardly anyone uses them. Nineteen out of every 20 felony convictions stem from guilty pleas. What does the Supreme Court have to do with that? Plenty. The Court has imposed elaborate rules governing nearly every aspect of criminal trials, from jury selection to sentencing. That makes trials more expensive. Worse, the justices keep refining procedural rules—making them so nuanced that no one can understand them. The examples are endless. The prosecutors in *Miller-El* v. *Dretke* struck almost all the blacks from the defendant's jury. You're not supposed to do that. A straightforward case, right? Not when Justice David Souter was through with it. His majority opinion went on for 33 pages of mind-numbing detail, muddying the waters. And, because lawyers can't tell what the law requires, they waste more time and energy arguing about it, which makes trials more costly still.

It gets worse. Last January, in *United States* v. *Booker*, the justices handed down a decision that rewrote key federal sentencing statutes. *Booker* provided dueling majority opinions by two opposing blocs of justices. Ruth Bader Ginsburg, the only justice to sign both, didn't explain her views. Lawyers and judges were left scratching their heads.

Procedures should be clear and simple. For criminal trials, they are anything but. That breeds uncertainty. It also breeds litigation that focuses on the process, rather than on the question that criminal trials are supposed to answer: whether the defendant committed the crime.

Poor defendants can't afford all that procedural litigation—hence the high guilty plea rate. Cash-strapped district attorneys know that and charge accordingly. So the universe of criminal defendants grows steadily poorer. In a society where race and class often coincide, these class biases tend to produce racial biases. This may explain why blacks, who were one-third of the total prison population in 1960, now make up nearly half.

These sound like liberal complaints. But conservatives have a lot to complain about, too, as they would know if they paid attention to anything other than the culture wars. *Miranda* doctrine bars the police from even the most genteel questioning of suspects who say the magic words—"I want to see a lawyer"—after they hear the famous warnings. That is a valuable gift to sophisticated criminals who know enough to keep their mouths shut. Not coincidentally, it is also a large gift to terrorists—which is why the government does not want to abide by U.S. law when questioning suspected Al Qaeda members.

WHY DOES THE Court do such a bad job in this area? The answer may be simple ignorance. The criminal justice system is a massively complex enterprise. Figuring out the effects of the latest abortion ruling is child's play compared with unpacking the consequences of decisions like *Wardlow* and *Kyllo* on policing or the effects of cases like *Miller-El* and *Booker* on criminal trials and plea bargains. Getting those consequences right would be hard even for experts. And the highest court in the land is not filled with experts. Souter is the only sitting justice with substantial experience in criminal litigation—and that was on the not-exactly-mean streets of New Hampshire. Frontline urban prosecutors and defense attorneys rarely end up on federal appeals courts, the breeding ground for future justices. So they never make it to presidential short lists.

Justices who have never seen the inside of a police station are happy to expound on the virtues and vices of different kinds of drug enforcement. If they knew more, they might say less. Veterans of the criminal justice trenches understand that, when it happens, productive change comes from the men and women who serve in those trenches. Community policing and crime labs, drug courts and faith-based prison initiatives, "broken windows" policing and partnerships with inner-city churches—all the best ideas in contemporary criminal law enforcement bubbled up from below. None stemmed from judicial edicts.

Judging from the names bandied about in the press, the next couple of Supreme Court picks will be like the ones who have gone before. That's a shame, but it need not be a tragedy. The justices—both old and new—need to remind themselves of a few simple truths. The Constitution guarantees a fair criminal process. That should mean a modest number of basic guarantees, defined as clearly as possible. Beyond the basics, legislators, prosecutors, and police officers should be free to experiment. The criminal justice system desperately needs innovation. Constitutionalizing everything five justices can agree on stifles innovation. If President Bush wants good results in this piece of the legal landscape, he should appoint justices who will let the real reformers do their jobs. ■

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A conservative martyr's comeback.

Miranda Rights

BY MICHAEL CROWLEY

ON A RECENT morning in Washington, Manuel Miranda was plotting conservative strategy for the upcoming Supreme Court nomination wars from the cluttered living room of his Capitol Hill townhouse. He sat crammed behind a small desk by the window, cordless phone to his ear, leading a conference call of some 50 grassroots Republican activists across the country. These were generally hardcore, pro-life conservatives, people dead-set against allowing George W. Bush to elevate his old friend and perceived abortion softie Attorney General Alberto Gonzales to the bench.

"Are there any folks on the call from Texas that know of any support for Gonzales in Texas?" Miranda asked. "Cathy, are you on the call? Cathy from Eagle Forum in Texas?" He listened for a moment and then added, "So there is no one on the call who is comfortable with the Gonzales nomination?" Opinions duly solicited, Miranda took the lead with an authoritative tone. "OK, let me tell you what is happening now, based on White House sources. There are two factions in the White House...." After dispensing scuttlebutt involving a struggle between noble ideologues and dreaded "pragmatists," he issued some talking points: "The global issue is that the president promised a nominee like Scalia or Thomas. I think we need to remind the White House of that promise."

In the middle of this, there came an unexpected knock at the front door. Miranda, mid-call, shrugged helplessly and motioned for me to answer. A neighbor was there to ask whether she might plug her garden hose into his outdoor faucet for some yard work. Oblivious to her disturbance of a high-stakes national political strategy session, she happily accepted my indifferent permission and strolled off.

There was a slight bathos to it all. Here was a broad-faced and slightly pudgy 45-year-old in wrinkled slacks and an untucked shirt urging his listeners that "folks at the very top of the [Republican National Committee] need to hear from us," while his neighbor waited to hear from him about lawn care. But Miranda's almost comical circumstances belie their serious origins. He works out of his home because he was fired last year from a senior Senate job amid allegations of theft and treachery that are now the subject of a federal investigation. Though hailed as a hero by the far right and reviled as a venal crook by Democrats, until recently, Manuel Miranda seemed destined to become a forgotten footnote of Washington political history. But the latest round of the judicial wars—and particularly the upcoming showdown over the Supreme Court—have offered this media-savvy ideological warrior a chance to rehabilitate his reputation and to perform that sublime American feat of turning disgrace into fame.

MIRANDA WAS BORN ten months after the 1959 Cuban revolution—showing, he says with a wry grin, "that different people react to revolutions in different ways." His anti-Castro family moved first to Spain and then to Queens, New York, where Miranda grew up a Democrat. In the 1980s, he was converted to the GOP by Ronald Reagan's anti-communism and his own increasingly devout pro-life Catholicism. After graduating from Georgetown and a small California law school, Miranda became an attorney. He was feisty from the start—and, his critics say, filled with delusions of grandeur. In 1989, he was arrested by Georgetown campus police after he crashed a meeting of the university's alumni association as part of his clients' attempt to win control of the organization. When Miranda sued the school, a judge scornfully dismissed his case, deriding the "plaintiff's effort to portray this case in apocalyptic terms as if it were an overriding human rights or civil rights struggle on a par with those of Rosa Parks or Nelson Mandela rather than a relatively pedestrian disagreement between groups of alumni."

Miranda established his conservative bona fides in the mid-'90s as the head of the nonprofit Cardinal Newman Society for Catholic Higher Education, which agitates for conservative values on Catholic campuses—a perch he used, among other things, to hound Georgetown President Leo O'Donovan for his perceived moral laxity. Then, in 2001, soon after testifying before the Senate Judiciary Committee on "religious liberty," Miranda was recruited by the committee's chairman, Orrin Hatch, to join his staff. A mere two years later, Miranda was tapped to be Majority Leader Bill Frist's top counsel. Democrats say this rapid career trajectory was aided by religious-conservative activists who wanted Frist to hire a reliable ally "to do their bidding," as one former Democratic judiciary aide puts it.

True or not, Miranda certainly did please the far right by leading a fierce GOP effort to confirm a handful of conservative Bush nominees who were being blocked by intense Democratic opposition in 2002 and 2003. Miranda particularly delighted conservatives in November 2003 when he orchestrated an all-night "debate" to highlight Democratic judicial filibusters. Unfortunately, Miranda also embarrassed himself when a leaked e-mail revealed his efforts to coordinate the spectacle with Fox News: "Fox News Channel is really excited about this marathon and Brit Hume at 6 would love to open with all our 51 Senators walking onto the floor," he wrote to fellow GOP staffers. "The [Fox] producer wants to know will we walk in exactly at 6:02 when the show starts so they get it live."

But it was a far more serious leak that brought him down. A few days later, excerpts from internal Democratic memos charting judicial nomination strategy were pub-

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lished in *The Washington Times* and *The Wall Street Journal*, and later, several of the documents were posted on a conservative website. An internal Senate investigation quickly fingered Miranda as the leaker. It turned out that, thanks to a computer glitch, Miranda, while serving as a Judiciary Committee staffer, had been able to access private Democratic files from his computer without a password. Other Republican aides who had learned about the glitch earlier refused to exploit it. But Miranda had no such compunctions, and, as he has since admitted, secretly downloaded and leaked the files. After Hatch pronounced himself "mortified [over] this improper, unethical, and simply unacceptable breach of confidential files," Miranda became a pariah and resigned from Frist's staff, he says, to spare the majority leader further political damage.

Miranda was furious and felt betrayed—especially by Hatch, whom he called "limp-wristed." He argued that the memos themselves—which showed Democrats working closely with liberal interest groups and, in one case, debating whether to delay a nominee who might influence a pending court case—were the real scandal, not the leak. (Democrats, noting Miranda's attempted Fox News stunt and the GOP's own obvious fealty to interest groups, tend to find this line amusing.) Indeed, Miranda told me his only real mistake was in not giving the memos to federal agents so they could investigate Democratic "corruption." He maintains that, because the memos were essentially "left unprotected," he did nothing illegal—a question currently being explored by a federal prosecutor in New York. And as for the ethics of snooping on his Democratic colleagues? "You have no ethical duty to your opposition," he declares.

Many Washington conservatives seem to agree. GOP icons like Free Congress Foundation Chairman Paul Weyrich have rallied to his defense, as have writers in outlets like *National Review* and *The Wall Street Journal* editorial page, which called Miranda "a scapegoat ... pinned to the wall for phony political appearances." The American Conservative Union even e-mailed an action alert declaring Miranda "a courageous American Hero."

HEROISM MIGHT HAVE been cold comfort at first. For much of last year, Miranda was unemployed, and he was forgotten as the judicial wars temporarily subsided during the 2004 election campaigns. His frustration peaked in March of this year, when he filed an affidavit charging that Senate Democratic staffers had called the law firm of McDermott Will & Emory, where he was up for a job, and threatened retaliation if they hired him. (A McDermott partner told *The Boston Globe* that it was the ongoing federal investigation, not Democratic pressure, that nixed Miranda's chances.)

This past spring, however, the intensity of the Senate's showdown over the filibuster gave Miranda new life. Suddenly, Washington was again obsessed with judicial nominations, and a former insider like himself was in high demand. Using contacts and an e-mail list he had compiled while a Senate staffer, Miranda assembled the National Coalition to End Judicial Filibusters, a vehicle for mobilizing grassroots support for the "nuclear option" that, by his count, organized 200 groups nationwide to pressure Frist to settle for nothing less than total victory. Miranda says it was easy getting the ear of grassroots conservatives "on the basis of the name recognition and trust that came from the Democrats' abuse of me."

After a compromise deal among Senate moderates ended the nuclear option fight, Miranda adapted: He renamed his operation the Third Branch Conference and reorganized it around the battle for the Supreme Court. "He's effective because he understands the process as an insider, but he carries himself like a grassroots activist from the outside," says fellow conservative judicial activist Sean Rushton.

That's true. But Miranda has also been effective at the crucial Washington art of self-promotion. His "coalition" mainly amounts to conference calls and mass e-mails. "I'm a one-man operation," he concedes. Yet that's enough for the press: In recent weeks, Miranda has appeared on Fox News and MSNBC, and he has been quoted in *The New York Times* and *The Washington Post*, as well as *The Boston Globe*, *The Christian Science Monitor*, the Toledo *Blade*, *The Buffalo News*, and so on. Reporters keep coming back, because Miranda, like any shrewd would-be pundit, supplies them with reliably saucy quotes. He recently complained to *Newsweek*, for instance, that cynical GOP strategists were pushing a Gonzales nomination as a sop to Latinos, with a future Jeb Bush presidential candidacy in mind. "We're not Republican patsies," Miranda huffed. "Jeb Bush can go sell insurance."

That sort of thing may enrage the White House, but reporters love it. "He hasn't exactly been on-message. ... The hit on him is that he's kind of gone off the reservation. There are some issues there, resentments," says one aide to a Republican member of the Senate Judiciary Committee. "[But] the guy is brilliant. He understands p.r., and he's good at media." Miranda's one-man activism, the aide says, "is a way back into the game."

And so it is. When I visited him, a documentary film crew was recording his every move for an upcoming feature on the judicial wars; a boom mike hovered overhead throughout his conference call. When he finished the call, Miranda exhaled loudly. The activists were spoiling for a good fight, he said with apparent admiration, and resented White House exhortations to mute their attacks on Gonzales. I asked him about his relationships with former allies on the Hill, some of whom now consider him an outcast. "I certainly have a bittersweet feeling about the whole thing," he said.

Suddenly he realized it was noon—and time for another conference call. Miranda was back at his desk, holding forth again into the cordless phone, this time to a group of Jewish Republicans. His introduction was a reminder that, in conservative politics especially, martyrdom is a potent marketing tool. "My name is Manuel Miranda, and I'm chairman of the Third Branch Conference," he began. "Some of you may recall my name from when I was counsel to Majority Leader Bill Frist." How could anyone forget? ■

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BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS

Early Sex

SEX CAN BE VERY HELPFUL. For a screenwriter who wants to treat a subject that might seem insufficiently interesting to some viewers, a strong sexual element can serve as hook and medium. As multiple instances have shown, that sexual element can bring along the background material that may have been the first reason for making the picture. The latest example is **LILA SAYS.**

LILA SAYS
(Samuel Goldwyn)

MY SUMMER OF LOVE
(Focus)

The screenplay of this French film is by Ziad Doueiri, who is Lebanese-born and has done a lot of technical work in Hollywood, particularly for Quentin Tarantino. Doueiri has made one previous feature, *West Beirut* (unseen by me), but to judge by his latest, his aims in film-making could hardly be further from Tarantino's. *Lila Says* is based on a novel whose author is unknown (it wouldn't stagger me to learn that Doueiri wrote it). The story provided the chance to make a film about some of the problems of Muslim young people in France, which was probably the first point of the enterprise, and the sexual element provided a means to make the subject viable in film. At any rate, that is the picture's effect: the sexual element is trenchant, while the status of Muslim youth registers strongly.

Marseilles, today. Chimo is a nineteen-year-old Muslim who, at the start, is trying to record in notebooks the experiences that, in extensive flashback, are the substance of the picture. He lives with his mother, who supports him; his father has run off with a French woman. Their apartment is in the Arab quarter of the city, and, like his three best friends—also Muslims, of course—he is jobless, aimless, bitterly sure that these conditions are his future.

A sixteen-year-old non-Arab girl named Lila, blonde and proud of her blondeness, approaches him one day in a park and quickly proceeds from chat to provocation. Soon she boasts of her body and asks him whether he wants to see her pubis. (OK, her pussy.) Chimo, for all his inner anger about his status, is a shy youth, reflective, emotionally wary. He doesn't immediately respond, which apparently is what Lila counted on and what, in some sort of presentiment, attracted her to him. The scene ends with Lila on a swing in the park, riding up high. She is not wearing panties, so Chimo can glimpse what she promised.

They often meet again, sometimes through her arrangement, sometimes through his, and each of their meetings is filled with her torrid accounts of her wild sexual past. These hot tales are clearly meant to tease him, and, though there is one brief sexual moment on her moped, she is almost relying on his innate delicacy to keep him from making moves. Still, in their peculiar, oblique way, this racially diverse pair grows steadily closer and closer.

Chimo's three friends, who have often seen Lila in the streets, have taunted and badgered her, and seem particularly heated because she is blonde and non-Muslim, and therefore would be a special conquest. They know little of Chimo's closeness to her, and they behave explosively toward Lila when they learn of it. In the end our suspicions about Lila's past are confirmed. So is the fate of her curious romance with Chimo. He is left with a roiling emotional legacy, which prompts the scribbling in his notebooks.

Doueiri has cast his film acutely. Chimo is played by Mohammed Khouas, who manages to blend social truculence and a sensitivity that verifies the end of the story. Vahina Giocante is perfect for Lila. She has no conventional sexpot quality: she simply seems an appealing, odd adolescent. Doueiri handles the encounters of this pair with sufficient empathy to make the frank sexual talk seem only the way in which they get to know each other. And he avoids the usual patness of paradoxical love—as when the pair are an Israeli and a Palestinian, a white person and a black person—by making this encounter seem inevitable, given the environment in which Chimo and Lila live. That environment lingers with us after the love story wisps away.

Pawel Pawlikowski is Polish-born but has been living in England for a number of years and has had his directing career there. After some BBC documentaries, he made his first feature, *Last Resort*, about which I remember chiefly its gritty naturalistic texture. So the texture of his new film, **MY SUMMER OF LOVE**—dreamy and shimmery—was surprising.

Naturally a director would want to suit his style to his subject, though it is notable that few distinguished directors have varied widely in style. Each usually chooses subjects that fit his style. In contrast, Pawlikowski seems, in some degree, to have been drawn to this subject because he wanted to change his style.

The screenplay, adapted by the director and Michael Wynne from a novel by Helen Cross, is about two teenage English girls and their summer of emotional growth. The setting is Yorkshire, whose landscape is here celebrated. Mona is a working-class girl who one day meets the upper-class Tamsin. Opposites do what they are proverbially supposed to do, and the two girls are soon intimate. This intimacy includes meetings in the manor house where Tamsin lives with her family. (Mona lives in a former pub that her evangelical brother has turned into a religious meetinghouse.) The girls' intimacy includes sexual investigation, of course, but the relationship seems almost equally based on Mona's desire to learn from the more widely knowledgeable Tamsin, who tells her about Freud and Nietzsche and Edith Piaf. (Piaf is heard over the closing credits.) For her part, Tamsin seems attracted by, among other things, a stubborn yet tender pride in Mona. The evangelical brother clearly

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portends some sort of trouble for them. His fervor, which in one aspect leads him to build a gigantic cross and carry it up a hillside with his followers, in another aspect makes him maneuverable to Tamsin. She is able to blunt his threat to her link with Mona.

The girls exchange heated avowals of lifetime love for each other, yet the summer ends as it had to end, as both girls tacitly knew it had to end—and not just because of class distinctions, though certainly they figure. We are left with a concluded lyric whose lyricism depended, in a way, on its conclusion.

Both actresses are talented beyond their years. Tamsin is played by the lovely Emily Blunt, who has a precocious imperial quality. Mona is Natalie Press, who is more homespun in appearance but creates an individual searching for herself, not a type taken from the shelf.

Little in this picture is intrinsically novel: adolescent emotional discoveries are hardly a fresh subject. But the film is emotionally and visually sustained, so it is pleasant, in a long-range sense, to see the story again. The director sometimes urges Ryszard Lenczewski's cinematography toward the arty, yet the film leaves us with the scent of the brisk Yorkshire air and the soft fragrance of inevitable parting. ■

DAVID HAJDU ON MUSIC

Jumble Jumble

ROCK AND ROLL HAS A QUALity of incompleteness that connects it to young adulthood. The music is formally underdeveloped. The lyrics do not need to hang together; the chords are not supposed to follow harmonic convention; the playing need not be precise; and if the singing is dead on pitch, it sounds wrong—that is, it sounds too right, too grown-up. Immanently unfinished, the music, like its audience, exists in a state of permanent adolescence, and carries an implicit critique of adult society's esteem for maturity, effectuation, and refinement. Rock musicians have employed and periodically updated this aesthetic (or conspicuously rejected elements of it) for five decades, though few have done so as rigorously and as successfully as the White Stripes.

The band is not a band in the usual mode, but a duo of guitar and drums whose creative scales are heavily tipped on the side of the guitarist, Jack White. Born John Gillis in Detroit thirty years ago, he took the surname of his first wife, Meg White, a former shop assistant and barmaid who started playing the drums two months before they had their first gig as the White Stripes, in 1997. The Whites divorced at some point, but continued working together. They have maintained a creepy ambiguity about their relationship, referring to each other as brother and sister while trading in sexual innuendo on stage and in lyrics to songs such as "Sister, Do You Know My Name?" Jack White apparently writes all the material, words and music. (Although the first three of the group's five albums credited their compositions vaguely to "the White Stripes," subsequent releases of the same songs on DVD attribute them solely to Jack White; on the last two albums, all original songs have been credited to him alone.) He does virtually all the lead singing, save for two Meg White solo numbers among the albums' seventy-three songs, one of which is only thirty-five seconds long. And he plays the duo's dominant instrument, guitar, as well as some piano and, on the new album, a bit of marimba. The White Stripes is essentially a two-person one-man band.

A new class of youngish singer-songwriters working under band aliases—Bright Eyes (Conor Oberst), Onelinedrawing (Jonah Sonz Matranga), Eels (Mark Oliver Everett), and Pedro the Lion (David Bazan), among the more prominent—has emerged in recent years, since desktop recording software such as ProTools has lowered the cost and the skill level necessary to make impressive-sounding multi-track recordings. Nearly anyone with some talent can now make a CD, alone, in his or her room. Digitally armed, solo artists have crossed into the terrain of bands and started taking their names. In due course, they have laid claim to the cool that comes with being in a group, while escaping (or postponing) the taint of wussiness inherent in being a singer-songwriter like James Taylor or Jackson Browne.

The White Stripes are radicals of this class, in part because they reject the technology that facilitates the music-making of most other one- and two-person groups of the day. (Quite a few guitar-and-drum duos, such as Nice Nice, Two Gallants, and Scissormen, have sprung up in the past several years, many in the Stripes' wake.) They play retro instruments—at a White Stripes concert at Manhattan's SummerStage two years ago, Jack White was playing a decades-old Kay archtop guitar, a starter instrument—and they record quickly, live in the studio, the way the Beatles did before they learned to exploit the studio, and make the recording, not the composition or the performance, into the art form. A note in the booklet of the White Stripes' *Elephant*, which appeared in 2003, proclaimed in red italic type: "No computers were used during the recording, mixing or mastering of this record." That is to say, no romantic notions about the analog past were harmed for the production. The statement was not so much a disclaimer as a claim to higher ground in a realm of pop recording perceived as authentic, and therefore superior, mainly because most other young artists aren't doing it that way today. So in truth its real claim is not to authenticity, but to exceptionalism—the enduring aspiration of permanent adolescence.

Unlike Conor Oberst and the rest, Jack White has no interest in synthesizing the sound of a band. Synthesis is scarcely his interest. White uses a minimal number of instruments—on most tracks on the majority of the White Stripes' albums, just guitar (sometimes piano), drums, and voice: no bass to lay a harmonic foundation for a song and flesh out the rhythm section; no second guitarist to add counterpoint or stimulate his own playing; with very few exceptions, no additional musicians at all. The intent is clearly to sound not like an ensemble but like an ensemble part, a piece of something unfinished whose larger form is uncertain and irrelevant. White Stripes tracks

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sound like demos—or, occasionally, rehearsals for demos, the work of a couple (or a former couple, or a sister and a brother, or whatever) trying out ideas in their rec room. The recordings are bonus tracks of outtakes for albums never meant to exist. Few artists have taken the fractional nature of rock and roll so to heart as Jack White and his ex-wife, the drummer who plays the same rudimentary beat to almost every song.

THE WHITE STRIPES HAD released two albums to little effect in the United States when, in the summer of 2001, they went to England and were acclaimed there as the next new thing, largely because they reminded English critics of past next new things that had come from their own country: Led Zeppelin, the Rolling Stones, and the Beatles. "Believe the White Stripe Hype: Jack and Meg White Are the Story of the Moment," announced a rather self-referential headline in *The Independent*. Like Jimi Hendrix and the Ramones in olden days, the White Stripes returned to America legitimized by England, and they broke through here with their third album, *White Blood Cells*. The American musical climate was hospitable: pop was nearing the end of an overtly commercial phase, the era of boy bands and Britney Spears. The White Stripes seemed an antidote to the corporate thinking and technical artifice infusing the airwaves.

The English critics were on to something. The White Stripes do sound a lot like Led Zeppelin (and other groups, several of which came up through the English electric-blues revival of the 1960s). On many tracks on their first few albums, Jack White sings almost exclusively in a pinched laryngeal squeak that seems almost a parody of Robert Plant, down to the hiccupping into falsetto and the abrupt, arbitrary wailing. His guitar playing, much the same, amounts to a reconfiguration of chordal effects and riffs that Jimmy Page and Eric Clapton (in his Cream days) adapted from vintage American blues. Compositionally, too, many of the White Stripes songs feel patched together from vinyl swatches: "Fell in Love With a Girl" (from *White Blood Cells*, which has been covered, as in obscured, by Joss Stone) uses the chorus of the Pretenders song "Middle of the Road"; "Hypnotize" (from the White Stripes' fourth album, *Elephant*) cribs the melody of Johnny Rivers's "Secret Agent Man"; and "As Ugly As I Seem" (from the Stripes' recent CD, *Get Behind Me Satan*) lifts the tune of Bob Dylan's "I Believe in You." Other songs appropriate more generally: here, a generic punk number ("Jumble Jumble" from the second album, *DeStijl*, named for the Dutch modernist movement); there, a playground chant ("We're Going to Be Friends" from *White Blood Cells*) or a country thing ("I'm Lonely" from *Satan*). Of course, all this comes in reduced form, as quick sketches—a couple of power chords, a few notes of lead guitar—that trace the outlines of earlier, more fully realized work; mnemonic devices for better things.

MEG WHITE PLAYS SO SPARingly that on some songs, such as "Sugar Never Tasted So Good" (from the first album) and "As Ugly As I Seem," Jack White feels compelled to add percussion fills by tapping patterns on his guitar. One way to think of her playing is economical. As such, it has an economy comparable to that of Baltic and Mediterranean Avenues, the dark-purple properties in Monopoly: it's the closest thing to bankruptcy, but only a game. Her ex-husband uses her as a found musical object, because her naïve, repetitive tapping in 4/4 time counterbalances his flailing and screeching, and also, I suppose, because she is incapable of getting in his way.

Jack White's various explanations of his partner's function are endearingly fanciful. "She brings a child-like quality to the music, an innocence, which is perfect for what we do," he said in an interview with the *Los Angeles Times* recently. Last year, he told the London *Observer*, "I love the fact that it's hard for people to understand. We've said before that it's always been a great thing to get certain people to go away thinking, 'Oh dear, she can't play the drums!' 'Fine, if you think it's all a gimmick, go away!' It weeds out people who wouldn't care anyway."

Care about *what*? He didn't say. I would think that evidence of incompetence and gimmickry would weed out people who care a great deal about aesthetic integrity and creative authenticity. White Stripes fans, whose numbers keep growing, must have a stronger appetite for contrivance and gamesmanship—or a more acute sense of irony—than Jack White realizes. From the studied theatricality of the duo's public relationship, through their fetishization of old technology, to the rigid constriction of their music and their highly codified stage presentation, the White Stripes are a small circus of gimmickry.

In concert, the Whites wear only red, black, and white, and their stage sets invariably utilize the same motif. Every one of their albums (and singles) has been packaged in these three colors, evocations of which also lace through the words of their songs ("Broken Bricks," "Apple Blossom," "Black Math"). Graphically, this color scheme is elemental and severe, like the White Stripes' music. The visual components work together through sharp contrast and have a dynamic, kinetic effect. In this group of three visual elements, only one, red, is really a color. As an allusion, the scheme evokes early twentieth-century constructivist art and Soviet propaganda posters, in which extremism and delusion found vivid expression.

THE LATEST WHITE STRIPES album, *Get Behind Me Satan*, appears at first to be a significant departure from the duo's past music. Just three of the thirteen songs (the opening cut, "Blue Orchid," and "Instinct Blues" and "Red Rain") have Jack White's thrashing, distorted electric guitar, and only two of them give us White in his Robert Plant voice. On the first selection, White adopts a chirping 1970s funk falsetto, and the color in the song title isn't even red, white, or black! Most of the tracks have White strumming or fingerpicking an acoustic guitar, blocking chords on a piano, or tapping on a marimba, while he sings in a nasal, conversational tenor. Meg White's presence is often spectral; on some tunes, there are no drums at all, just some dinging on a triangle or ringing bells. (The tambourine-playing on the album is by Jack White.) The record—which is literally a record, released on vinyl LP as well as CD—is quieter and more varied in texture than the previous albums.

But finally it is of a piece with them, and ultimately less satisfying. Beneath its textural surface, *Get Behind Me Satan* is another collection of homages or larcenies ("The Nurse" ends like half a dozen John Lennon songs, the piano part to "White Moon" comes from Dylan's "Dear Landlord"), conspicuously arty gestures (a toy piano on "Red Rain," coy references to Rita Hayworth and studio-era Hollywood throughout the album's

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lyrics), and perfunctory musical ideas weakly or partially executed. As Jack White has said in interviews, he went into the recording studio without having finished the album's songs. He came out the same way.

Like most of the White Stripes' output, *Get Behind Me Satan* has the character of work tapes, the sound of music very much in progress. It disappoints more than its predecessors because the musicianship is poorer. Jack White is a skilled rock guitarist; mimicking Jimmy Page is not an easy thing to do. (That is why every teenager plays "Whole Lotta Love" to show off in the guitar store.) But White can barely execute simple triads on the piano; and his marimba playing is not exactly playing, it's learning on studio time. In a way, then, *Get Behind Me Satan* represents a triumph for Meg White as a musical force. The White Stripes' scales are now leveling to a point of equilateral amateurism.

Usually described as minimalism or primitivism, the aesthetic of the White Stripes is also a kind of formalism, in that they have always made themselves work within a set of carefully defined structures that matter more than their contents. They are obsessed with form, as well as with the dissembling of forms into smaller, essential units: a couple of instruments, a few chords, three colors. "The band is so special and so boxed in, and there are so many limitations," Jack White told the *Ottawa Citizen* a few years ago. "It's such an art project, in one sense.... I think eventually it's going to burn itself out. It can only go so far."

Two years later, we have, in *Get Behind Me Satan*, White's manifesto for survival: an album that attempts to retain the specialness of the White Stripes by keeping the box, retaining the limitations, and changing only what is inside. The White Stripes still fetishize the past—*Satan* sounds as if it were recorded in Sun Studios after Elvis's sessions, and the CD booklet has a staged black-and-white photo of Meg and Jack White as members of a rockabilly band that could have been in Memphis in 1954. They still play all the instruments themselves, with Jack handling most of the creative work, and nearly all their songs are still variations on the same three models: electric blues, country blues, and children's music. Now they're doing so with acoustic instruments.

The White Stripes remain contemporary rock's masters of malformation. They have produced a body of work characterized by nothing so much as a refusal to be whole. All notions and whims, experiments and fits, their music begs for resolution and denies it. No wonder the band is so popular with young America: the White Stripes create the music of the IM age, the sound of tossed-off partial thoughts, blurted out and blithely replaced with more of the same, never concluding. Jack White may think of his work as a protest against the proliferation of digital technology, but his music is its leitmotif. ■

Cass R. Sunstein
Super Freak

FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING
By Steven D. Levitt and Stephen J. Dubner
(William Morrow, 242 pp., $25.95)

MUCH OF THE INFLUence of modern economics derives from the claim that human beings respond rationally to incentives. It is a deceptively simple claim with many implications. If welfare pays more than work, many people will avoid work in favor of welfare; if the price of gasoline suddenly jumps, more people will use mass transportation; if the minimum wage is significantly increased, some workers will lose their jobs, simply because it is more expensive to pay them. These examples are pretty obvious, but the interest in incentives can have more surprising ramifications. Some economists contend, for example, that laws forbidding discrimination will actually increase discrimination: if employers have to make expensive accommodations for disabled people, or if they face a risk of age-discrimination claims from disgruntled older workers, they may be less likely to hire those who are disabled and older. Or consider the question of how to explain declining rates of marriage and increasing rates of divorce: the focus on incentives suggests that the growing economic opportunities for women are a key contributing factor.

This unusual book is an outgrowth of a profile of Steven D. Levitt, a young economist at the University of Chicago, that appeared in *The New York Times Magazine*. The profiler, Stephen J. Dubner, lionized his subject, and found him to be entirely fascinating. Dubner depicted Levitt as a maverick or an iconoclast—a nerd but also a rogue, as the book's subtitle describes him. More, Dubner saw Levitt as someone who could use data to sort out the deepest riddles of society—what the book's subtitle describes as "the hidden side of everything." When several publishers approached Levitt with the suggestion that he should produce a book for a popular audience, he asked Dubner to collaborate with him. While much of the lucid, non-technical, and occasionally annoying exposition appears to be Dubner's, the findings and the analyses in *Freakonomics* are Levitt's, based on his academic writings; and so the book may be rightly treated as Levitt's own.

What makes Levitt's work distinctive is that he does not rest content with theory. In many domains, he offers remarkably creative empirical tests for theoretical claims, and he shows where they stand or fall. But there is an irony here. The book's title and presentation disguise the extent to which Levitt is not really a "rogue economist" at all. On the contrary: Levitt's central theoretical claim is completely conventional. As he puts it, "Incentives are the cornerstone of modern life." Much of his book is built on this premise. But the very idea that people respond rationally to incentives is under intense pressure from some of the most exciting developments in contemporary economics.

LEVITT IS WIDELY ADMIRED among social scientists, and his focus on incentives certainly leads to a number of striking findings. Here is an example. Many sellers of houses think that real-estate agents can be trusted to obtain the highest possible offer. After all, real-estate agents earn commissions, and hence

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their incentives should be perfectly aligned with the interests of sellers. But is this really so? Levitt calculates that a typical agent stands to gain only about $150 from obtaining an additional $10,000 for the seller—which means that haggling over $20,000, or even $30,000, isn't worth much for the agent. On the other hand, real-estate agents tend to invest a lot of money in houses that they purchase for resale. How does their behavior shift when they are selling their own houses? It turns out that it shifts significantly. Real-estate agents keep their own houses on the market an average of ten days longer, and they sell their houses for about 3 percent more, producing a $10,000 gain on a $300,000 house. Contrary to the conventional wisdom, it turns out that the incentives of agents are not always allied with the incentives of sellers.

Levitt is particularly interested in the problem of cheating, and he wants to investigate the possibility that when there is a strong incentive to cheat, human beings will be more inclined to do so, in a way that will undo important social programs. His most interesting finding involves the performance of schoolteachers under President Bush's No Child Left Behind law. In Chicago, public school administrators were told that if their students' reading scores were low, their schools would be placed on probation and perhaps eventually shut down; if so, staff would be dismissed or reassigned. Levitt hypothesized that the new system created a strong incentive for cheating. He suspected that an easy way to cheat would be for teachers to collect students' answer sheets and replace wrong answers with right ones.

To test his suspicion, he obtained an amazing database: the test answers of every Chicago public school student from third grade to seventh grade during the period from 1993 to 2000. Examining nearly 100 million individual answers, Levitt developed and applied a "cheating algorithm." This was essentially a computerized method for detecting suspicious patterns—in which, say, a large group of students in a given class managed to produce the same six correct answers in a row, even though they were otherwise making many blunders. Levitt was able to show that widespread cheating occurred. His analysis was actually used by the Chicago public school system, which fired about a dozen demonstrated cheaters. The threat of discharge is a strong disincentive, and so it might not be surprising that the following year cheating fell by over 30 percent.

LEVITT'S ATTENTION TO INCENTIVES also plays a key role in his best and most provocative chapter, an inquiry into the massive decline in crime in the 1990s. Between 1975 and 1990, the rate of violent crime shot up by 80 percent, and experts predicted that the 1990s would see a continued increase, even a crime epidemic. But to almost everyone's surprise, the crime rate rapidly decreased, ultimately to the levels of forty years earlier. Levitt's innovative claim is that part of the decline is a direct result of the Supreme Court's legalization of abortion in *Roe* v. *Wade*. The claim has outraged many people across the political spectrum, but Levitt's basic idea is simple. After abortion was legalized, a number of likely criminals were not allowed to be born in the 1970s, and as a result the crime rate went down twenty years later. Levitt's striking conclusion is that legalized abortion played a much larger role than capital punishment in reducing the rate of violent crime.

But Levitt is not only interested in abortion; his more general goals are to debunk failed explanations of declining crime and to isolate the factors that really made a difference. Many people think that the strong economy was responsible for the downturn in crime, but Levitt finds that a look at the data "destroys" this theory. At most, economic growth slightly reduces nonviolent crime, and it has little or no effect on violent crime. Hence the high growth rates of the 1990s cannot possibly explain the 40 percent decrease in violent crime in that period. Tougher gun laws have been unimportant, in part because there is a flourishing black market in gun sales. Levitt concludes that the much-publicized Brady Act, requiring a criminal check and a waiting period prior to gun purchases, "has proven to be practically impotent in lowering crime." Nor has capital punishment had much of an impact. Levitt notes that the execution rate was and remains extremely low; hence he believes that the fear of execution is unlikely to be "a driving force in a criminal's calculus."

Drawing on Mayor Rudy Giuliani's highly publicized successes in New York City, many people have attributed the drop in crime to innovative new strategies by the police. These include the "broken windows" approach, which attempts to reduce minor nuisances as a way of discouraging the more serious criminal activity that supposedly follows them. But Levitt shows that in New York City and elsewhere, the drops in violent crime actually preceded the adoption of the new strategies, which cannot be shown to have had a significant beneficial effect. Some people speculate that the reduction in crime came from the aging of the population, and in fact there was real population growth in the 1990s among the elderly (who are a lot less likely to be murderers and thieves). But Levitt concludes that "the graying of America did nothing to bring down crime in the 1990s. Demographic change is too slow and subtle a process—you don't graduate from teenage hoodlum to senior citizen in just a few years—to even begin to explain the suddenness of the crime decline."

What, then, does account for the decline? Levitt points to four factors. The first is the bursting of the crack bubble, which greatly reduced the market for crack, a source of a lot of violence. During the 1990s, the profits for selling crack decreased dramatically, and "younger dealers decided that the smaller profits didn't justify the risk." As a result, "the violence abated." Levitt concludes that the "crash of the crack market" produced no less than 15 percent of the crime decrease in the 1990s. Even more important, in his view, was the second factor: the government's increased reliance on incarceration. In the 1990s, courts started putting far more people in jail, so that by 2000, "more than two million people were in prison, roughly four times the number as of 1972. Fully half of that increase took place during the 1990s." Levitt finds that the high imprisonment rates accounted for no less than one-third of the crime drop. The third factor is the increased number of police on the streets, producing increased deterrence and ultimately counting for as much as 10 percent of the diminution in crime in the 1990s.

The fourth factor is legalized abortion. Before *Roe*, daughters of wealthy and middle-class families were usually able to arrange for a safe abortion, even if it was unlawful. The real effect of *Roe* was felt mostly by poorer women, and especially those who were unmarried, teenaged, or poor. After the Supreme Court's decision, Levitt says, such women had much easier access to safe and lawful abortions, and hence the abortion

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rate, for them, increased significantly. If we are trying to explain the decline in the crime rate, this is an important change, because childhood poverty and a single-parent household "are among the strongest predictors that a child will have a criminal future." Levitt thinks that it is no coincidence that the decline occurred in the early 1990s, "just as the first cohort of children born after *Roe* v. *Wade* was hitting its late teen years." The key point is that this cohort was missing those "children who stood the greatest chance of becoming criminals." Hence it is unsurprising that the crime rate fell. Levitt's extensive supporting evidence includes the striking finding that early reductions in violent crime occurred in the five states that legalized abortion at least two years before *Roe* v. *Wade* (New York, California, Washington, Alaska, and Hawaii). Indeed, studies in Australia and Canada have found a similar link between legalized abortion and crime.

LEVITT LIKES TO PUNCTURE myths. Turning from crime to democracy, he finds that campaign expenditures do not much affect elections. True, victorious candidates tend to raise a lot of money; but maybe they raise money because they are popular, rather than the other way around. To test this hypothesis, Levitt examines what happens when the same two candidates run against each other in consecutive elections, as has happened in almost a thousand congressional races since 1972. "Here's the surprise; the amount of money spent by the candidates *hardly matters at all*," he writes. "A winning candidate can cut his spending in half and lose only 1 percent of the vote." In Levitt's view, what matters is who the candidate is, not how much money he spends.

Levitt thinks also that myths pervade the topic of parenthood. For one thing, parents are scared of the wrong things. Most parents are unwilling to keep a gun in their house, believing that guns impose a significant fatality risk. But the same parents are also entirely willing to have a swimming pool in the backyard. In Levitt's view, this disparity makes little sense. For every 11,000 residential pools in the United States, one child dies—meaning that about 550 children drown each year in pools. By contrast, only one child is "killed by a gun for every 1 million-plus guns." Hence any particular child is more than 100 times more likely to die in a pool than to be killed by a gun.

Emphasizing that people fear guns far more than they fear pools, Levitt concludes that most people are "terrible risk assessors." People fear flying more than they fear driving, but the per-hour death rates of driving and flying are about equal—an impressive point in favor of flying, because you can get a lot farther in an hour in an airplane. And when a risk produces outrage, people's concern is greatly heightened, whatever the statistics show. Levitt believes that this creates genuine problems both for individuals and for governments as they respond to short-term scares. Far more lives would be saved by some modest precautions for swimming pools than are now saved by flame-retardant pajamas and child-resistant packaging.

Can parents do anything to promote academic success? Levitt finds that high test scores are not correlated with having an intact family, having a mother who worked while the child was between birth and kindergarten age, or having attended Head Start. None of these factors matters. What does matter is whether the parents are highly educated, whether the mother was thirty or older when her first child was born, whether there are many books in the home, and whether the parents have a high socioeconomic status. It follows that for purposes of producing high academic achievement, child-rearing techniques are greatly overrated. Of course parents count. But "by the time most people pick up a parenting book, it is far too late. Most of the things that matter were decided long ago—who you are, whom you married, what kind of life you lead." Children are more likely to succeed if their parents are well-educated and well-paid. "It isn't so much a matter of what you *do* as a parent; it's who you are."

Continuing his focus on parenting, Levitt also offers an extended and entertaining (and somewhat obsessive) discussion of children's names. He is particularly interested in the difference between the naming decisions of African Americans and those of whites. Before the 1970s, black and white names overlapped far more than they do today. Now, more than 40 percent of African American girls born in California receive

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a name that is shared by none of the 100,000 white girls born in the same year. Distinctly black names are most likely to be given by "an unmarried, low-income, undereducated teenage mother from a black neighborhood who has a distinctively black name herself." The "whitest" names include Molly, Amy, Claire, Jake, Connor, and Tanner; the "blackest" names include Imani, Ebony, Shanice, DeShawn, DeAndre, and Marquis. Moving beyond race, Levitt finds that there is a strong correlation between babies' names and the socioeconomic status of parents. Wealthy white families are especially likely to select such names as Alexandra, Lauren, Katherine, Benjamin, Samuel, Jonathan, and Andrew; poorer white families favor such names as Amber, Heather, Kayla, Cody, Brandon, and Anthony. Highly educated parents show systematically different naming patterns from those of parents with little education.

But Levitt isn't really interested in providing answers to trivia contests. He also wants to know whether names matter to economic success. As he is aware, some impressive studies show that people with distinctly black names tend to receive fewer callbacks from employers than otherwise identical people with distinctively white names. The economists Marianne Bertrand and Sendhil Mullainathan sent out numerous resumés and found that employers were far more interested in people with such names as Emily and Greg than in those with such names as Lakisha and Jamal. Consistent with this evidence, Levitt finds that "on average, a person with a distinctively black name—whether it is a woman named Imani or a man named DeShawn—does have a worse life outcome than a woman named Molly or a man named Jake." But unlike Bertrand and Mullainathan, Levitt's evidence suggests that the name is not the source of the problem. What matters is the family and economic circumstances, not the name itself: "If two black boys, Jake Williams and DeShawn Williams, are born in the same neighborhood and into the same familial and economic circumstances, they would likely have similar life outcomes."

What accounts for the differences in names over time? Levitt does not have a complete answer, but he does demonstrate that "once a name catches on among high-income, highly educated parents, it starts working its way down the socioeconomic ladder." The most popular names of any given year were particularly popular among high-end families of fifteen years prior. Levitt thus predicts that in 2015 we will find more girls with such names as Annika, Emma, Fiona, Grace, and Kate, while more boys will be called Aidan, Asher, Beckett, Carter, and Liam. Levitt concludes that "an overwhelming number of parents use a name to signal *their own expectations* of how successful their children will be." While names are not "likely to make a shard of difference," parents appear to "feel better knowing that, from the very outset, they tried their best."

Readers of *Freakonomics* should not be misled by the book's slick packaging and stupid title. Every one of the chapters is embarrassingly prefaced by an excerpt from Dubner's *Times* profile, often congratulating Levitt for his wonderfulness and sometimes depicting him as a demigod. (I am not exaggerating. One chapter is introduced thus: "[Levitt] has shown other economists just how well their tools can make sense of the real world. 'Levitt is considered a demigod, one of the most creative people in economics and maybe in all social science,' says Colin F. Camerer, an economist at the California Institute of Technology.") The authors seem to fear that their substantive material might be boring, and they try too hard to create major drama, cuteness, or perhaps a reality television show, with one- or two-sentence paragraphs. Here's one paragraph: "Was Temptress actually 'living out her name' . . . ? Or would she have wound up in trouble even if her mother had called her Chastity?" Another paragraph: "Has there ever been another art so devoutly converted into a science as the art of parenting?" Another paragraph: "Right?"

There is no such thing as freakonomics. Nor is there anything remotely freaky about Levitt's approach. In assuming that people are rationally responsive to incentives, he is a perfectly conventional man of his trade. Levitt stands out not because of any large claims about human motivations, but because of his remarkable ingenuity, creativity, and sheer doggedness in investigating empirical questions about which no one seems to know much at all. Unfortunately, some of his findings are not terribly exciting. Are you amazed to learn that well-educated parents produce children with

Ossification

You say, art undresses life, shows us its nipples
and suckling pigs, exhumed from palm fronds
and leprosy. You say, it's Easter Island
framed and hung with one gold nail in a beamless
wall. How does it stay up? How can the old man
with one leg not topple when the weather lights

his windbreaker on fire? He claps both hands
over his chest and mutters something about
the hierarchy of clouds. You misinterpret this
as thunder or ash, as the girdle that shapes
the trunk of the plum tree. Pluck one before
the blood shoots to its branches, before its eyes

fill with fluid and spill their quince. Be the giraffe.
I know it's in you. Your mother had it. You bite
one side. I'll bite the other. Meet you at the pit.
If the bomb rings while we're eating, let the machine
get it. At our windowsill, the potted basil attacks
the potted thyme. The winner goes home with the pig.

How dare we deny those whose function is to flavor?
Love reduced to oilpaints. Sex reduced to sculpture.
Remember what Giuseppe said? How Rubens created
his own fetish? He died with a stocking in his mouth.

If you unhook my belt, I'll kiss you. You should
know this: My tongue has gone the way of the windbreaker, plum-skin. If you be the giraffe, I'll be
the lioness, open my mouth as an asphodel. Go ahead.

Read me another chapter. Sing me to sleep. And this time, be specific.

MATTHEW GAVIN FRANK

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high test scores? Are you stunned to hear that many parents give their children names that they consider to signify high status?

But some of Levitt's inquiries do illuminate important problems. We now know, for example, that economic growth does little or nothing to reduce violent crime; that innovative policing strategies haven't much mattered; and that if states really want to reduce crime rates, they will put a lot more police on the street. But these points do not entirely explain the excitement generated by Levitt's book. (*The New York Times Magazine* has just introduced a regular freakonomical column by Dubner and Levitt.) One factor, I think, is that the book cleverly combines Dubner's journalistic gushing with Levitt's academic findings, thus encouraging the reader to gush along with Dubner even before the findings are presented and assessed. More charitably, it is fun and even exhilarating to see how a real social scientist goes about testing competing hypotheses. Some of Levitt's inquiries read like good detective stories. With respect to many urgent social questions, people engage in noisy and vehement debates without a sense that helpful illumination is available, in principle and maybe even in practice, by means of a careful investigation of the facts. Many of the issues that sharply divide us are, after all, empirical matters, and it is real progress simply to recognize them as such. And Levitt does far more than that.

STILL, LEVITT'S CLAIMS RAISE questions. Many parents know that unsupervised swimming is dangerous; they prefer pools to guns because they think that for most children pools are a lot more fun (and swimming is good exercise). In short, parents think that pools are much more likely to meet the standards of cost-benefit analysis, the economist's lodestar. Nor does Levitt's investigation offer anything to contradict the important finding that those with distinctly African American names are less likely to be called back for job interviews than are people with more stereotypically white names. If Jake Williams and DeShawn Williams have sent out the same resumé, employers will show more interest in Jake. Even if the two have similar economic prospects in life, it remains a problem if DeShawn is subject to greater discrimination at an early stage in the employment market.

Levitt's claim that campaign expenditures do not much affect elections is not established by the evidence that he marshals, which suggests, much more narrowly, that such expenditures do not have a substantial impact on outcomes between candidates who have run against each other in a prior election. Suppose that, having defeated Rick Lazio in 2000, Hillary Clinton runs against Lazio again in 2006. It is highly plausible to think that Clinton would win again, even if Lazio raised a lot more money this time. Levitt's evidence suggests that significant changes in funding for two candidates who have opposed each other before are not likely to make much difference. But for candidates who are running for the first time, the accumulation of money is usually indispensable. In any case, Levitt generally insists that people respond rationally to incentives. If money is essentially irrelevant, why do candidates spend so much of their time trying to obtain it?

Levitt has been severely attacked for his most notorious claim, which is that the legalization of abortion significantly contributed to the decrease in violent crime in the 1990s. Liberals fear that the claim is racist, and conservatives despise the idea that abortion might be an effective crime-control strategy. But Levitt is not defending abortion, or arguing on its behalf for women who are poor and single. His claim is simply about what the facts show; and he does a great deal to make that claim more than plausible. To know whether he is right, however, we need to know a great deal not just about the law, but also about the actual abortion rates in the 1960s and 1970s. *Roe* v. *Wade* was decided in 1973, but numerous abortions, both legal and illegal, occurred before that date. One problem for his analysis, and even for the collection of data, is that there is no comprehensive evidence about the rate of illegal abortions, and the figures are much disputed, based as they are on extrapolations rather than direct evidence. If the Supreme Court's decision did not by itself produce a significant increase in abortions—if the actual abortion rate spiked, say, in 1965 or 1980—then Levitt cannot demonstrate that the decrease in crime was significantly affected by *Roe* v. *Wade*. In his technical writing, Levitt has tried to address this complication; but in his book he does not adequately support the bold suggestion that "abortion was one of the greatest crime-lowering factors in American history."

AND THERE IS A LARGER question in the background of all this. In general, Levitt assumes and sometimes shows that people respond rationally to incentives. This assumption is central to his claim that the death penalty is unlikely to deter; it also motivates many of his hypotheses about real estate, cheating, and crime. But Levitt also emphasizes and sometimes shows individual and social errors. He suggests that people choose "high-end" names with the (false) expectation that their children will be helped as a result. Is that rational? More broadly, he emphasizes that people are "terrible risk assessors"; hence his claim that parents are afraid of the wrong things. If people are terrible risk assessors, they will not always respond rationally to incentives. Maybe real-estate agents, criminals, and prospective cheaters are terrible risk assessors, too.

Much of the most exciting work in contemporary economics rejects the idea that human beings are entirely rational. It systematically investigates our difficulties in assessing risks. It finds pervasive human errors and illusions. It emphasizes problems of self-control. It also suggests that many people will often refuse to cheat, or to behave unfairly, simply because they fear social sanctions—and that many other people will play fairly because of their own conscience. In short, the real "rogue economists" of our day have been rethinking the theoretical foundations of modern social science, replacing *homo economicus* with *homo sapiens*. Many economists have known for a long time now that *homo economicus* is the real freak.

But Levitt is an empiricist and not a dogmatist, even about his own assumptions. In his profile and in this book, Dubner quotes Levitt as saying, with a nerdish guileless confidence, that "I'd like to put together a set of tools that let us catch terrorists. I don't necessarily know yet how I'd go about it. But given the right data, I have little doubt that I could figure out the answer." This is more than the confidence of economic theory, it is the confidence of social science; and it is admirable. One of the virtues of this decidedly unfreakish book is its demonstration that such confidence might well be vindicated—that with the right data, we might well be able to make progress in resolving some of society's most intractable perplexities. ■

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Michael André Bernstein
The Sorrow Reflex

CAMPO SANTO
By W. G. Sebald
Translated by Anthea Bell
(Random House, 221 pp., $24.95)

UNRECOUNTED
Poems by W. G. Sebald
Lithographs by Jan Peter Tripp
Translated by Michael Hamburger
(New Directions, 109 pp., $22.95)

I.

ALTHOUGH HE ARRIVED AT it relatively late in his senselessly truncated life, once W. G. Sebald found his real voice, it became unmistakable: melancholy, allusive, inward, and elegant, its cadences carried from book to book until each one seemed like another sketch from a single, instantly recognizable personal landscape. Like all powerful literary instruments, Sebald's prose was at once an utterly private idiom and a way of feeling and responding to the world, and the unqualified ardor with which it was received says nearly as much about the needs of his admirers as it does about his own achievements. There is a fin-de-siècle aspect to Sebald's prose, a subtle acquiescence to what he calls, in a characteristic phrase from *Campo Santo*, "all the unfathomable misfortune of life." More than any writer since Hugo von Hofmannsthal, whose less worldly heir Sebald seems at times to have become, he found a way to articulate an ever more isolating sense of estrangement from the world's brutality in a filigree of the most suavely formed sentences.

At the level of syntax and vocabulary, Sebald's prose is almost preternaturally untroubled by the historical and personal devastations that his books anatomize, and doubtless it is just this kind of doubled effect, the reassurance of an almost stately formal surface as the medium for an intractable focus on "a sense of shame and sorrow" (as he calls it in *Austerlitz*) that is a chief source of his appeal. Like Hofmannsthal in "The Lord Chandos Letter," a foundational text of Austro-German modernism whose wrenching confession of language's impotence in the face of spiritual and moral crisis Sebald often deliberately echoes, his own still deeper suspicion of high culture is formulated entirely in the terms of that culture's canonical achievements. In Sebald's writing, although the Western cultural heritage is made to bear witness against itself, it is also implicitly granted a measure of exoneration for having given us the very categories with which to formulate our accusations. There is something subtly flattering to a reader in a prose that permits one to feel so right about feeling so bad, and reassuring to a certain kind of mandarin taste, hyper-educated but deeply aware of culture's complicity with history's atrocities.

Sebald's work offers a morally permissible shelter in which the melancholy and the elegant reinforce and, more seductively, come close to redeeming each other. His works hold out the promise that the inward life of the reader and scholar is not a withdrawal from, but rather an ethically responsible confrontation with, the worst that human beings have inflicted upon one another throughout history. The passionate gratitude with which Sebald's admirers have embraced him is surely in part a response to such a welcome validation of their own temperaments.

SEBALD CAME BY HIS SENSE OF existence as what one of his characters calls "the scene of some unexpiated crime" with ample justification. He was born in the Bavarian Alps in May 1944 to an absent father who did not return from a French prisoner-of-war camp until 1947; and perhaps especially because the rural area in which he was raised was physically untouched by the war, he later came to believe that the horrors of the Third Reich, which were never discussed by any of the adults among whom he grew up, "had cast a shadow over me from which I shall never entirely emerge." He became certain that the evasions and the denials that were almost palpable in the silences of his childhood community penetrated every aspect of daily life, from the music programs that his father enjoyed hearing on the radio to the Sunday decorations in an empty butcher-shop window. Even after leaving for university in 1963, Sebald says that he still "learned almost nothing of recent German history."

Only after he went abroad to study, first in French-speaking Switzerland in 1965, and then, a year later, in England, did he come to understand "the destruction that was present at the beginning of my life." From then on, with brief interruptions, Sebald spent most of his adult life in self-imposed expatriation as a university teacher of German literature, first in Manchester, then at the University of East Anglia in Norwich, where he was awarded a chair in European literature in 1988. I say expatriation rather than exile, to emphasize an increasingly ignored distinction. Exile is an imposed—often a savagely imposed—condition; it is not a question of free choice. Without the element of coercion, the term loses any useful specificity. Adorno in Los Angeles and Solzhenitsyn in Vermont were exiles; Sebald in East Anglia was not.

Indeed, until 1996, with the appearance in English of *The Emigrants*, the first of his books to be translated from German, Sebald's only reputation was as a critic of Austro-German literature whose writings were published exclusively in his homeland. Right up to his fatal car accident on December 14, 2001, shortly after the international success of *Austerlitz*, his last completed book, he wrote all his important works entirely in German, and returned regularly to his homeland, and showed himself deeply appreciative of the many literary prizes with which he was honored there. In Sebald's acceptance speeches, one of which appears as the final entry in *Campo Santo*, he shows little of the wariness and anxiety that marked, say, Paul Celan's trips to Germany to receive similar recognition.

Yet Sebald had no hesitation about using such occasions to insist that his listeners face up to what had been committed during the Nazi years. His demands are all the more potent for being framed as part of a larger expression of

Michael André Bernstein's novel, CONSPIRATORS, *has just been published in paperback by Picador. He is also the author of* FIVE PORTRAITS: MODERNITY AND THE IMAGINATION IN TWENTIETH-CENTURY GERMAN WRITING *(Northwestern University Press).*

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gratitude at being welcomed into the various German literary institutions. In his address to the Collegium of the German Academy, he charged the culture in which he grew up "with an almost premeditated blindness," and affirmed the validity of what one might call "the view from abroad," the corrective necessity of a perspective, sharpened and clarified by distance, on what is most determinedly occluded at home.

For Sebald, Alexander and Margarete Mitscherlich's theory of "the inability to mourn," first formulated in 1967, offers the most powerful single explanation for "the mental disposition of postwar society in West Germany," and he quotes it to telling effect in the essay "Constructs of Mourning," one of the central pieces in the critical writings collected in *Campo Santo*. But if an inability to mourn defined the universe of Sebald's childhood, the adult writer more than made up for it. A pervasive sense of mourning, an unassuaged but unspecified desolation, dominates his prose. Here, for example, are three characteristic passages from *Campo Santo*, followed by representative moments from early on in three of Sebald's prior books.

From *Campo Santo*:

> Where will they all go, the dead of Buenos Aires and São Paolo, of Mexico City, Lagos and Cairo, Tokyo, Shanghai, and Bombay? Very few of them, probably, into a cool grave. And who has remembered them, who remembers them at all?

> Early on a Sunday morning, however, I would hear the Rottachtal ensemble or other local musicians on the radio with their dulcimers and guitars, for my father, who came home only on weekends, had a particular liking for this kind of traditional Bavarian folk music, which to me has taken on in retrospect the character of something terrible which I know will pursue me to my grave.

> It was a day as fine as another more than twenty years later, when I was sitting in my garden with a bad headache after finishing a work about torture that had occupied me for some time....

From its predecessors:

> I began to sense in me a vague apprehension which manifested itself as a feeling of vertigo. The outlines on which I tried to focus dissolved, and my thoughts disintegrated before I could fully grasp them. Although at times when obliged to lean against a wall or seek refuge in the doorway of a building, I feared that mental paralysis was beginning to take hold of me, I could think of no way of resisting it but to walk until late into the night, till I was utterly worn out. (*Vertigo*)

> In August 1992, when the dog days were drawing to an end, I set off to walk the county of Suffolk, in the hope of dispelling the emptiness that takes hold of me whenever I have completed a long stint of work. (*The Rings of Saturn*)

> Even on my arrival, as the train rolled slowly over the viaduct with its curious pointed turrets on both sides and into the dark station concourse, I had begun to feel unwell, and this sense of indisposition persisted for the whole of my visit to Belgium.... I still remember the uncertainty of my footsteps as I walked all around the inner city ... until at last, plagued by a headache and my uneasy thoughts, I took refuge in the zoo.... (*Austerlitz*)

Irrespective of the particular theme or structure of the individual text, Sebald's narrator always experiences the same feeling of generalized and omnipresent unease. Characteristically, a scrupulous specificity about date, place, landscape, and architecture is wedded to a shadowy, all-engulfing feeling of emotional disorientation and leaden weariness. Terms such as "a vague apprehension," "mental paralysis," and "inner desolation" recur like musical motifs, creating the particular mood and tone that Sebald made his own.

The problem is that after a while the repetition begins to sound like a reflex or a mannerism. Sometimes, as in the contrast between the fine day and his headache "after finishing a work about torture," there is almost a note of unintended self-parody. Tonally, whole paragraphs could be transposed from one book to another without seriously affecting the work's integrity, just as, at the level of syntax and rhythm, all of Sebald's important characters, irrespective of age or gender, sound remarkably similar to one another, and, most of all, to Sebald himself in his autobiographical texts.

It is perhaps this sameness of emotional response and state of mind, from book to book and from character to character, that prompted Sebald to acknowledge that "my medium is prose, not the novel," and led him to create a new hybrid genre in which travel memoir, autobiography, antiquarian ruminations, fiction, literary biography, and photographic images all merge. The mingling of genres is Sebald's most notable formal invention, and beginning with *Vertigo* (originally published in 1990, but not translated into English until 1999), it enabled his astonishing transformation from the writer of capable but not especially compelling academic studies into the author of the books on which his reputation now rests.

Paradoxically, it is Sebald's isolating, melancholy inwardness that creates the uncanny intimacy between narrator and reader that is the hallmark of his writing. The more Sebald insists on his loneliness and his disorientation, the more powerfully he triggers a compensatory

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attentiveness, and even solicitude, in his reader. But as with any single tone maintained with such undeviating consistency, sooner or later the problem of modulation arises; and although at his best Sebald belongs in the company of literature's true connoisseurs of mourning, the sameness of his music can weary all but the most similarly predisposed listener.

The fundamental atmosphere of Sebald's books, reiterated from setting to setting in his restless wandering, is always the same and always affirmed early. It is composed of two logically separate but emotionally allied elements. On the one hand, there is the sense that the living are saturated with an anxious awareness of the dead. Balanced against this recognition is a contrary lament, succinctly formulated in *Austerlitz*: "the darkness does not lift but becomes yet heavier as I think how little we can hold in mind, how everything is constantly lapsing into oblivion with every extinguished life." Ghost-haunted and ghost-abandoned are viewed as equally dispiriting fates, and either or both conditions testify, in Sebald's writing, to some basic unreality in our quotidian lives.

Many of Sebald's most memorable characterizations are of people emotionally numbed, almost to the point of paralysis, by the horrors of Nazism, and his reflections on his own childhood grapple searchingly with the effects of a willful, collective silence about the extermination of European Jewry; and so it is tempting to read Sebald's books as a series of confrontations with the after-effects of the Shoah. But such a reading strikes me as fundamentally unconvincing. The Nazi genocide figures in Sebald as simply one more instance, even if it is the most often invoked one, of a timeless, repetitive pattern of human savagery. If they resemble any recognizable models at all, Sebald's works are most akin to the Romantic era's travel memoirs, in which a man of leisure and sensibility visits the site of what had once been a great historical happening, and if he is of a melancholic disposition, the destination usually carries some sorrowful association and prompts a meditation on human fragility and the vanity of life.

Like all literary melancholics, Sebald finds a similar provocation to sorrowful meditations no matter where he looks; and it is this predisposition, and not a particular historical or moral argument, that makes him regard on a single continuum the slaughter of soldiers sacrificed to their commanders' ambition and the victims of industrial-scale Nazi extermination. His texts move freely, sometimes even in a single paragraph, from considering the "terrible past" of the Nazi years to the "field of corpses outside Dresden" during the Napoleonic war, until any sense of differentiation is jeopardized. Sebald's continuum is more aesthetic than ethical. Its function is not to imply that the loss of every single life is equally grievous, still less to get at the truth of a particular episode, but rather to provide a historical occasion for another somber reflection on what *Campo Santo* calls "our severely disturbed species."

II.

If the deliberate merging of genres in Sebald's best works serves to create something genuinely unexpected and unsettling, the decision to gather a ragbag of disparate texts—some of them, like the title piece, not written to stand alone, others from so early in his career as to belong almost to a different writer—in order to publish them as a book seems less a tribute than a trivializing imitation of Sebald's own procedure. Beyond the author's celebrity and the fact that none of the pieces had been translated into English before, it is impossible to discern any principle governing what is included in *Campo Santo*. The book's title is somewhat misleading, since it refers only to the first, brief series of writings drawn from a larger project about Sebald's trip to Corsica and set aside when he began work on *Austerlitz*. The four pieces about Corsica, ranging from two to nineteen pages, are grouped together at the beginning of the volume and give a hint of what might have evolved into a significant addition to Sebald's canon.

For all their brevity, there are moments when these Corsican pages reach toward a newfound interest in lives and situations different from the author's familiar repertoire. Even the landscape, sun-drenched and rugged, dotted with whitewashed buildings and gardens of eucalyptus and oleanders, is a welcome relief from the fog-enshrouded, chilly grayness that is Sebald's customary atmosphere. The setting inspires the writer to passages of brilliantly observed, rhythmically and tonally alert prose, re-created in English with matching skill by his gifted translator Anthea Bell. For once, Sebald allows moments of simple humor into his text, as when he suddenly realizes that the cashier at the Casa Bonaparte, Napoleon's birthplace, looks startlingly like the emperor himself.

Soon enough, though, all the well-known themes re-emerge, and even the poor cashier and her fellow custodian, another formidable lady "who also seemed to be of Napoleonic descent," are absorbed into the familiar company of Sebaldian ghosts. They are no longer specific individuals, but only two more "discreet messengers from the past." Ultimately, it is not the island's landscape nor its present-day inhabitants that holds Sebald's attention, but rather its funeral and bereavement rituals, and by far the most sustained meditation is inspired by his visit to a local cemetery, the holy ground or *campo santo* that gives its name to the book. What Sebald turns out to cherish most about Corsica is that it is a place where "remembrance of the dead never really comes to an end." And with that we have come full circle, back to the world of *The Emigrants*, whose first section closed with Sebald's most quoted sentence: "And so they are ever returning to us, the dead."

In Corsica, though, he is haunted by the contrary realization, and his prose elegy in a country graveyard ends on the melancholy thought that soon it will be only in such so-called "primitive" settings that the dead and the living can remain in intimate contact. In "the urban societies of the late twentieth century," he fears that "the whole past will flow into a formless, indistinct, silent mass. And leaving a present without memory, in the face of a future that no individual mind can now envisage, in the end we shall ourselves relinquish life without feeling any need to linger at least for a while, nor shall we be impelled to pay return visits from time to time." It is as desolate a prospect as anything he has written before, but, more importantly, it is a lament that would be entirely at home in any of the books that had preceded his voyage to Corsica. Perhaps this helps to explain why the project was never completed.

The rest of the volume lets us follow Sebald's various enthusiasms and preoccupations, ranging from a thoroughly academic piece on Peter Handke's play *Kaspar*, the original German version of which appeared as far back as 1975,

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to relatively recent tributes, composed in Sebald's later, intimately personal voice, to favorite writers such as Kafka, Nabokov, and Bruce Chatwin. Among these literary studies and autobiographical reminiscences, the editor has placed more challengingly polemical essays, such as "Between History and Natural History: On the Literary Description of Total Destruction" and "Constructs of Mourning: Günter Grass and Wolfgang Hildesheimer." In the first of these, Sebald raises the problem of "why the destruction of the German cities toward the end of the Second World War was not (with those few exceptions that prove the rule) taken as a subject for literary depiction either then or later." Here he largely limits himself to a close reading and shrewd critique of three writers willing to touch the topic at all. But this early essay is clearly a preparatory step toward the four texts that make up *Luftkrieg und Literatur* (which appeared in 1999 and was posthumously translated into English as *On the Natural History of Destruction* rather than the more straightforward *Air War and Literature*).

SEBALD'S ATTACK ON THE POLITical and social amnesia that made the Allied bombing raids over all the major German civilian population centers a taboo subject among German writers has provoked fierce indignation among both German- and English-language readers. But while his own way of treating the subject seems to me highly problematic, it is misguided to invoke against Sebald the potential misuse of his texts by right-wing elements in his homeland. German neo-fascists and Nazi sympathizers have no shortage of far more congenial sources for their polemics. Among his contemporaries, very few writers have been as insistent as Sebald on the score of German responsibility for and national complicity with the Nazi genocide, or have made its effects, on both Jewish survivors and on ordinary German citizens, so central to their work. Sebald surely earned the right to explore in his own way a painful issue with which military historians as well as philosophers and novelists have shown themselves increasingly concerned.

More telling, perhaps, is the fact that only by artificially restricting his view to Germany, rather than to German-language writers, can Sebald justify excluding from consideration the work of Thomas Bernhard. Bernhard is not only one of the most significant writers in the language since World War II, but a major influence on Sebald himself, a writer about whom Sebald has written more than once in other contexts. Bernhard's five-volume autobiography, published between 1975 and 1982 and translated into English as a single book, *Gathering Evidence*, contains extended descriptions of walking through Salzburg after a bombing attack, narrated with a specificity of vivid detail that at every point contradicts Sebald's thesis of an all-engulfing amnesia. Perhaps Bernhard is simply too powerful a voice for Sebald to assimilate here into his more decorously restrained prose. But whatever the cause, Bernhard's absence leaves one with a sense that the repression Sebald diagnoses in others has taken root in him as well, if only in the form of limiting his imaginative openness to motives for and witnesses to the very silence about which he is determined to speak.

But to the graver charge that Sebald's attention to the firebombing of German cities is presented without adequate context, and that it thereby implicitly relativizes the Nazi atrocities, there is no satisfactory answer, since all of his writing is grounded in a vision that universalizes endless murder. Auschwitz and Theresienstadt give a twentieth-century local habitation and name to an evil that Sebald finds everywhere in history, and it is from this perspective, not as some never-before-imagined moral and conceptual black hole, that the Shoah is understood in Sebald's books. In one of the essays in *Campo Santo*, he gives a litany of present-day sites of horror, distinguishing among them no more than he does among the century's earlier ones: "the zones of devastation that are always spreading somewhere, in the Sudan, Kosovo, Eritrea, or Afghanistan." The numbed, vertiginous horror to which Sebald's prose gives voice finds adequate motivation wherever it looks, and it remains an open question whether such a generalized and all-encompassing fixation on evil ultimately deadens or deepens an author's moral vision. One cannot sit shivah for the world.

And yet no one has written better of the moral shabbiness of German writers' postwar apologias for their passivity under the Nazis. "Constructs of Mourning" is a brilliant and unsparing analysis of the strategies by which celebrated authors such as Heinrich Böll and Alfred Andersch propagated "the myth of the good German who had no choice but to let everything wash over him and bear it." Sebald coldly dismisses the whole "fiction of a difference between passive resistance and passive collaboration" on which the national attempt at self-exculpation depended. All these evasions of the real work of mourning are exposed and rightly rejected, but like much of Sebald's work, the essay left me wondering whether the psychological and ethical prestige of mourning, especially as it relates to the postwar German response to the Shoah, may be overrated. The rage, the biting irony, and the wild humor of Thomas Bernhard's voice, so alert to the particulars of Austrian smugness and provincial self-satisfaction, and stung to such inventive fury by his countrymen's refusal to admit their central role in Nazism, is a welcome alternative to Sebald's undifferentiated and global sorrow.

III.

IT IS REGRETTABLE THAT *UNRecounted*, another posthumous work published virtually at the same time as *Campo Santo*, should have received so much less attention. In many ways *Unrecounted* is the more powerful book, due largely to the thirty-three lithographs by Jan Peter Tripp, the artist whose images are accompanied by Sebald's poem fragments in this collaborative volume. Tripp and Sebald were childhood friends in postwar Bavaria. Tripp studied in Stuttgart and Vienna and acquired a reputation as an important painter, especially for his portraits of artists. The two men shared a similar sense of estrangement and inner dislocation, and Sebald would frequently visit

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Tripp at his studio in Mittelbergheim in Alsace. In 1998, Sebald published an intensely personal essay on Tripp's work, included in the English edition of *Unrecounted*, in which he praises the ways the painter's "deeply searching objectivity" turns ordinary portraiture into a "pathographic enterprise." "The longer I look at the pictures of Jan Peter Tripp," Sebald writes, "the better I understand that behind the illusions of the surface, a dread-inspiring depth is concealed. It is the metaphysical lining of reality, so to speak."

The usual notions of photorealism are radically insufficient to account for the sheer strangeness of Tripp's images. Although he depicts all of his subjects, from human faces to stray items of furniture, with meticulous care for every physical feature, his work has little in common with such noted photorealists as Chuck Close, Robert Bechtle, Richard Estes, or Ralph Goings. If anything, Tripp's pictures are closer in their unsettling effect to William Harnett's somber trompe l'oeil still lifes, painted in late nineteenth-century Philadelphia. In Tripp's art, there is a disconcerting reversal of the role of the observer and the objects observed, and his consummate technical mastery testifies, in Sebald's words, to "the autonomous existence of things to which ... we stand in a subordinate and dependent relationship. Because (in principle) things outlast us, they know more about us than we know about them: they carry the experiences they have had with us inside them and are—in fact—the book of our history opened before us."

OVER THE YEARS, TRIPP AND Sebald discussed the possibility of collaborating on a book in which word and painting would not illustrate or even directly comment on each other, but rather enter into a conversation in which the relationship between their separate contributions would be sometimes straightforward but more often tantalizingly oblique. As a governing principle for a joint work by a painter and a writer, there is nothing especially unusual about such a decision. From the Surrealists to the New York School of poets and painters, collaborative projects between visual artists and writers have been a cornerstone of high modernism, and almost invariably the participants explicitly reject any merely illustrative connection between their contributions. But *Unrecounted* is one of the oddest examples of this tradition I have come across.

For his part in the venture, Tripp took numerous photos of the eyes of people both he and Sebald either knew personally or admired, and found pictures of others, without regard to chronology or the original medium, including a famous photograph of Proust, a Rembrandt self-portrait, and the Comtesse d'Haussonville as depicted in Ingres's great painting of 1845. Tripp then redrew these in a series of lithographs, rendered with such precision that on first glance they all seem like photographs. And yet the harder one looks, the clearer it becomes that they are not. The shadings and the lines are not those of a photograph. At times, especially in the way the eyebrows curl upward and the bridge of the nose creates a small valley of minute wrinkles, Tripp's drawing skills and sensitivity to the interplay of light and shade create an overall effect of luminous, alert stillness that is reminiscent of the fifteenth-century Flemish masters. Tripp is interested in using lithography to approach what they achieved by exploiting the characteristics of oil-based paint to build up layers of transparent glazes, thus creating a surface on which to capture objects in the minutest detail. Panofsky's comment that the great early Netherlandish painters were not aiming just at representation, but at reconstruction of what they saw, applies equally, I think, to Tripp's eye-portraits. (He calls them "eye-landscapes.") The critic Andrea Köhler has rightly observed that Tripp short-circuits any serious attempt to conflate his art with the precision of a photographic portrait by finding a way to include "the motions by which a person turns round, lowers the eyelids, shakes his/her head or speaks." It is a remarkable accomplishment, and one should be grateful that through this book Tripp's work might begin to be more widely known in this country.

Although they may not realize it, Sebald's readers are already familiar with Tripp, since the opening pages of *Austerlitz* contain four eye-portraits, two of nocturnal creatures from the Antwerp Zoo and two of human faces similar to those in *Unrecounted*. Neither the artist nor his subjects is named in *Austerlitz*, but in *Unrecounted* we learn a good deal about Tripp's life and technique, and are provided with a list of the subjects of the eye-portraits. These include, along with Proust and Rembrandt, many well-known figures from the contemporary world of art and literature such as Burroughs, Borges, Beckett, Truman Capote, Barnett Newman, and Jasper Johns. Sebald, his daughter Anna, and the family dog are also depicted, as is Tripp himself, the translator Michael Hamburger, and their German publisher Michael Krüger.

KRÜGER HAS DESCRIBED THE genesis of the volume as the product of an abiding obsession shared by writer and painter with the problem of looking, and with the tension between self-revelation and self-concealment that any confrontation with the gaze of another entails. In *Austerlitz*, Sebald explicitly compares the large eyes of the animals found in the zoo to the "fixed inquiring gaze found in certain painters and philosophers who seek to penetrate the darkness which surrounds us purely by means of looking and thinking." For their joint book project, Sebald sent Tripp a series of "micropoems," or what Michael Hamburger calls "reductive epiphanies." The book is designed to be held horizontally, with Sebald's texts placed on a separate page below Tripp's images. Sometimes the relationship between word and picture seems so explicit as to be almost programmatic, as in these lines accompanying Rembrandt's eyes: "Like a dog/ Cézanne says/that's how a painter/must see, the eye/fixed and almost/averted." More often, the link is either tenuous or so strictly personal as to be indecipherable. Jasper Johns, for example, is accompanied by the following lines: "This writing paper/smells/like wood shavings /inside the coffin," while Moritz, Sebald's dog (the sole animal included in the book), is placed above these lines: "Please send me/the brown overcoat/ from the Rhine valley/in which at one time/I used to ramble by night."

Sebald died before the final decisions about the book were made, so there is always the chance that he might have ordered at least some of the juxtapositions differently. More unsettling is the fact that many of Sebald's texts had already been used in an earlier collaboration with the British artist Tess Jaray. The cover of their book, *For Years Now*, announces "Poems by W. G. Sebald" and "Images by Tess Jaray"; it was published in December 2001, just before Sebald's

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death. Michael Hamburger's preface to *Unrecounted* opens by acknowledging that English-speaking readers might be "puzzled or disappointed" to find out about the earlier use of many of the poems, and says that he himself was "worried" about it when Tripp asked him to translate the poems.

HAMBURGER'S TONE IN INTRODUCING *Unrecounted* is as strange as anything in the book itself. In a weird amalgam of telling both too much and too little, Hamburger alludes to a "crisis" in Sebald's life and work, and of "conflicts and contradictions he chose not to clarify." But after raising these issues, he does nothing further to relate them to Sebald's decision to use the identical texts for two different collaborative projects. He tells us only that although Sebald gave him copies of all his books, "he never so much as mentioned the writing of these miniatures," and never referred to the existence of *For Years Now*. We do not know what Jaray thought upon seeing *Unrecounted*, but if nothing else, the recycling of identical texts in such radically different contexts makes one wonder whether there was any basis beyond the most purely adventitious to the juxtapositions in either *Unrecounted* or *For Years Now*. It is difficult to imagine work further apart in technique or resonance than Jaray's rigorous geometric abstractions and Tripp's eye-portraits. If the same words can accompany absolutely unrelated images in two entirely different books, then the issue of multiple lines of interpretations between word and picture is a matter of accident, not of any thematic richness and ambiguity.

And yet Sebald's readers should not be all that surprised by such a development. In *Campo Santo*, at the end of the visit to the Casa Bonaparte, Sebald tells us about "an amateur historian called Alfonse Huyghens ... [according to whom] all the cataclysmic events caused by the Emperor of the French in the lands and realms of Europe were to be traced solely to his color blindness, which made him unable to tell red from green. The more blood flowed on the battlefield, this Belgian scholar told me, the greener Napoleon thought the grass was growing." As an example of dotty speculation, recalled by Sebald in response to seeing Napoleon's birthplace become yet another European tourist site, the anecdote has one kind of resonance. But set as a poem, "They say/that Napoleon/was colour-blind/& blood for him/as green as/grass," and placed below Michael Krüger's eyes, it has a radically different weight and leads one along an entirely different trajectory of interpretation. Since Sebald's fundamental vision remained so similar from book to book, the re-use of a constellation of identical texts in both *For Years Now* and *Unrecounted* is actually consonant with his deepest impulses as a writer. If his many travels and human encounters ultimately always lead him back to the same emotions and speculations, why should his unvarying music not accompany two very dissimilar kinds of art? But that these posthumous works will contribute much to his reputation seems to me unlikely. ■

CORRESPONDENCE

continued from page 5

their 2004 defeat. The dialogue among eleven scholars in six different fields was grounded in specific, limited case studies of religion precisely to challenge our comfortable assumptions. The cases aim to present specific examples of religion in order to learn how we, and perhaps others, can better recognize and evaluate the multiple roles that religion plays in democratic society. Instead of declaring each case as useful to the political left or right, we propose a framework for recognizing how practices and organizations function in a given place—fostering expression, forming identities, creating social bonds, shaping moral discourse, enabling civic participation, and providing social services.

Wolfe argues that Brent Coffin's case dealing with three congregations in Lexington, Massachusetts, as they debated homosexuality, is not representative of the wider religious landscape. Yet Coffin makes clear that it is not meant to be. For support, Wolfe cites a number of alleged distortions that have little meaning to one who has not read the case, except to insinuate that it gets the facts wrong. For example, Wolfe objects to calling Lexington "affluent" instead of "rich." One who reads the case will find data on Lexington's racial-ethnic composition, average income and income growth in the 1990s, non-affordability of housing for middle-income families, and membership and budgets of its congregations in contrast to national averages.

Wolfe further objects that one of three congregations described in detail, Trinity Covenant Church, is not really conservative—it is liberal. His source for this correction is Jim Wallis, who reportedly sees the Evangelical Covenant Church in the United States as a potential ally in his social justice movement. Yet Trinity professes conservative articles of the Christian faith, explicitly opposes homosexuality, and teaches its members that only heterosexual marriage is acceptable.

The problem is not that Wolfe challenges our conclusions, about which we welcome debate. But he does so by misrepresenting a case showing three churches in the same rich town negotiating their religious and moral orientations on a divisive public issue. This doesn't serve his mission well. If Wolfe wishes to make a broad-brush case that the assimilation of religion into American culture is good for democracy—or wants to show us how to make America great again—he is wise to follow his own counsel. Philosophical argument is best done forthrightly and not in disguise.

BRENT COFFIN
MARY JO BANE
RICHARD HIGGINS
Cambridge, Massachusetts
The authors are the editors of TAKING FAITH SERIOUSLY.

ALAN WOLFE RESPONDS:

Every single point made by Brent Coffin, Mary Jo Bane, and Richard Higgins is wrong. I described the methodology of *Taking Faith Seriously* accurately and praised it effusively, pointing out that its message was one that "liberals do not like to hear." Brent Coffin writes in his study that Lexington's religious congregations "mirror broader trends"; I argued that they do not. I specifically cited the fact that Trinity Covenant Church teaches that only heterosexual marriage is acceptable, but I went on to point out that it is as liberal a church as one can find in the evangelical world—which Coffin failed to mention. The authors of this letter do not cite a word of my review, save for my correct description of Lexington as "rich." That is because the words in my review demonstrate overwhelmingly that, in their rush to defend Brent Coffin's essay, the authors throw out accusations against me that cannot withstand even elementary scrutiny. ■

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LONDON DIARIST

Terror, Take Two

I WITNESSED THE EVENTS OF September 11 from my office window in Manhattan. I experienced the events of July 7 from the northern edge of London, where I was attending a company off-site. Much of my reaction last week, and the reactions of people around me, were similar to those nearly four years ago. There were anxious phone calls and e-mails to spouses and children. As with September 11, the overloaded mobile phone networks heightened the anxiety of those who couldn't get through. There was, again, the stream of rumors and false reports—more bombs found, more bombers sighted. There were road closures and a shutdown of mass transit. There were security checkpoints. There was a scramble to figure out how to get home that evening, or, if that wasn't possible, where to spend the night.

BUT MANY THINGS ABOUT THE TWO days were different. To begin with, there was some sort of temporal context for the London bombings. September 11 was just another day; July 7 was the day British Prime Minister Tony Blair was to lead the G8 summit at Gleneagles. There was also the jarring contrast of jubilation just the day before, when London won the right to host the 2012 Olympics. ("Must have been the French," I heard someone mumble upon first hearing the news of the bombings.) September 11 was a day of awe and panic in Manhattan, and the catastrophe was on a massive scale. The events in London were of a smaller dimension—bloody, but more comprehensible. On September 11, all business stopped, the day's agenda abandoned. In London, however, the reaction was businesslike and measured. At our conference, we gave people the freedom to make calls and modified our afternoon plans. But the conference continued; work went on.

ON SEPTEMBER 11, THERE WAS MUCH discussion about the symbolic nature of the attacks on the Twin Towers and the Pentagon. Canary Wharf, where my company has offices, is now as representative of business as any edifice in London. But the London bombings, like the Madrid bombings last year, were not aimed at a symbol of capitalism, or any other symbol for that matter—not Parliament or 10 Downing Street or the London Eye. They were aimed, in fact, at the opposite of anything symbolic. The targets had nothing of the Twin Towers' irresistibility. The attacks were aimed at commuters during the morning rush hour. In the United States, we know how vulnerable our trains and buses and ports are. But we expect, and imagine, attacks on places of symbolic importance: the U.S. Capitol, the Golden Gate Bridge, Disney World. In London, there seems to be no similar expectation. The rumors that circulated were about bombs on other buses, at other stations.

LONDON IS PERHAPS THE MOST INTERnational of cities, hospitable for years to a large Muslim population, including Islamic fundamentalists from Saudi Arabia, Tunisia, and elsewhere. The question in Western society is how much the belief in civil liberty will impede the ability to protect civil society. The British have achieved a relatively good and improving balance between the protection of individual freedoms and the police powers appropriate to identify and frustrate terrorists. It is a success based on a long history and a tolerant view of its Muslim population. Joseph Conrad's *The Secret Agent* was published in London a century ago; years of experience with the Irish Republican Army has made the combating of terrorism the topic of discourse, not constitutional heresy. The same is true elsewhere in Europe, where experience with the Basque separatists, the Red Brigade, Palestinian terrorists, and other such groups is long.

IN THE UNITED STATES, WE CANNOT seem to strike the right balance. Within our boundaries, we are fiercely protective of civil liberties; outside of them, as Abu Ghraib and Guantánamo attest, police power seems unchecked. In law school, I read the Supreme Court's *Korematsu* decision on the detention of Japanese Americans and took away from it what most law students do: a revulsion at cultural stereotyping. There was little discussion about national security needs trumping civil liberties. And yet, now I understand the decision in a way I did not then. There is also a significant difference between a war declared against a nation and a war declared against shadows.

WE HAVE BECOME INCREASINGLY ADEPT at thinking about acts of terrorism as abstractions. We view them through the cold calculus of stock markets. We know that investors who react with panic are outwitted and overwhelmed by those who react with cool calculation. We are becoming skilled at estimating the financial damage from terrorism just as we have also learned to take the measure of natural disasters like earthquakes and tsunamis. The markets are but one aspect of our social psyche, but they indicate that we are getting used to taking the dimensions of terrorism. We are not only thinking through the ramifications of the unthinkable, we are modeling them and betting our pensions on the results.

OF COURSE, THERE IS NOTHING ABSTRACT about terrorist acts for their victims, those injured and those family members and friends left grieving. For the rest of us, eyewitnesses and observers, there is, if not abstraction, an increasing sense of routine. I was a frequent passenger on PanAm 103 before the Lockerbie disaster; I was trapped overnight in Manhattan in the power outage two Augusts ago; I have been in two cities under terrorist attack. At my company, as at many large companies now, contingency plans for terrorist incidents and other crises are an integral aspect of corporate life. If terrorism strikes, I now know what I must do, whom I must call or reach by e-mail, where to meet up with others, what travel and lodging and eating plans are realistic. My children accept all this as a fact of their childhood; at home, we openly discuss the emergency instruction manuals their school sends home in their backpacks. Most days, I pass through the magnificent interior of Grand Central Station twice; occasionally, I glance at the policemen and National Guardsmen stationed there and think, *Will this be the day?* We are getting better at ferreting out and inhibiting terrorism. In the United States, as in London, we are also getting better at learning to live with it. **MARC GRANETZ**

Marc Granetz, a former editor of NEW REPUBLIC *Books, works at a securities firm in Manhattan.*

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Property and Privilege

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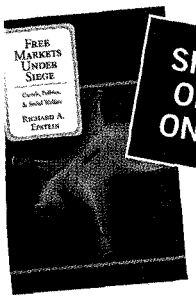

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The recent dreadful decision of the United States Supreme Court in *Kelo v. City of New London* held that New London could take the homes of ordinary citizens in the name of urban planning. It didn't seem to matter to the five-member majority that the city's porous redevelopment plan did not evince any intelligible purpose, let alone the public use that the Constitution requires.

The good news in the aftermath of *Kelo* is that it has forced people, especially on the political left, to rethink their views on the place of private property. Ever since the decisive and wrongheaded New Deal decisions in the mid-1930s, the Supreme Court has by and large held that the constitutional protections of private property should be read weakly so as to allow governments to act in ways that advance some notion of the common or public good. The underlying liberal vision was that private property was the instrument of individuals of privilege and power, which had to be cut down to size by an alert legislature that had the interests of the little man at heart. The liberal justices on the Supreme Court have accordingly done everything to give their blessing to local land use condemnation and regulation.

Kelo shows the utter fatuity in that position. There is of course every reason to believe that people with great wealth will use their power and influence to turn legislative decisions in their direction. But it hardly follows that private property is the villain of the piece. In many cases, the system of strong property rights works to protect people of limited wealth from the machinations of others. This defensive use of private property was evident to such philosophers as John Locke and such economists as Adam Smith. It impressed itself on this nation's Founders, who understood the risk that political factions put to the stability of our social order.

Here is one telltale sign of the massive amounts of political favoritism in *Kelo.* One common argument in favor of a broad use of the eminent domain power is that it is necessary to allow developers to assemble large parcels of land for major developments. But in *Kelo* the New London planners were quite happy to slate private homes for destruction while allowing the Italian Dramatic Club (a watering hole for local politicians) to remain untouched, even though it abutted one of the private homes that was taken.

Last year, the Michigan Supreme Court held that its state constitution blocked the use of the eminent domain power for so-called economic development. Other states are now falling into line. **With a little bit of hard work, the instinctive revulsion toward the *Kelo* decision could lead to a groundswell of public action.** But whatever the future brings, remember that the four dissenters—Rehnquist, O'Connor, Scalia, and Thomas—all so-called conservatives, were the defenders of the Constitution and the little man.

—Richard A. Epstein

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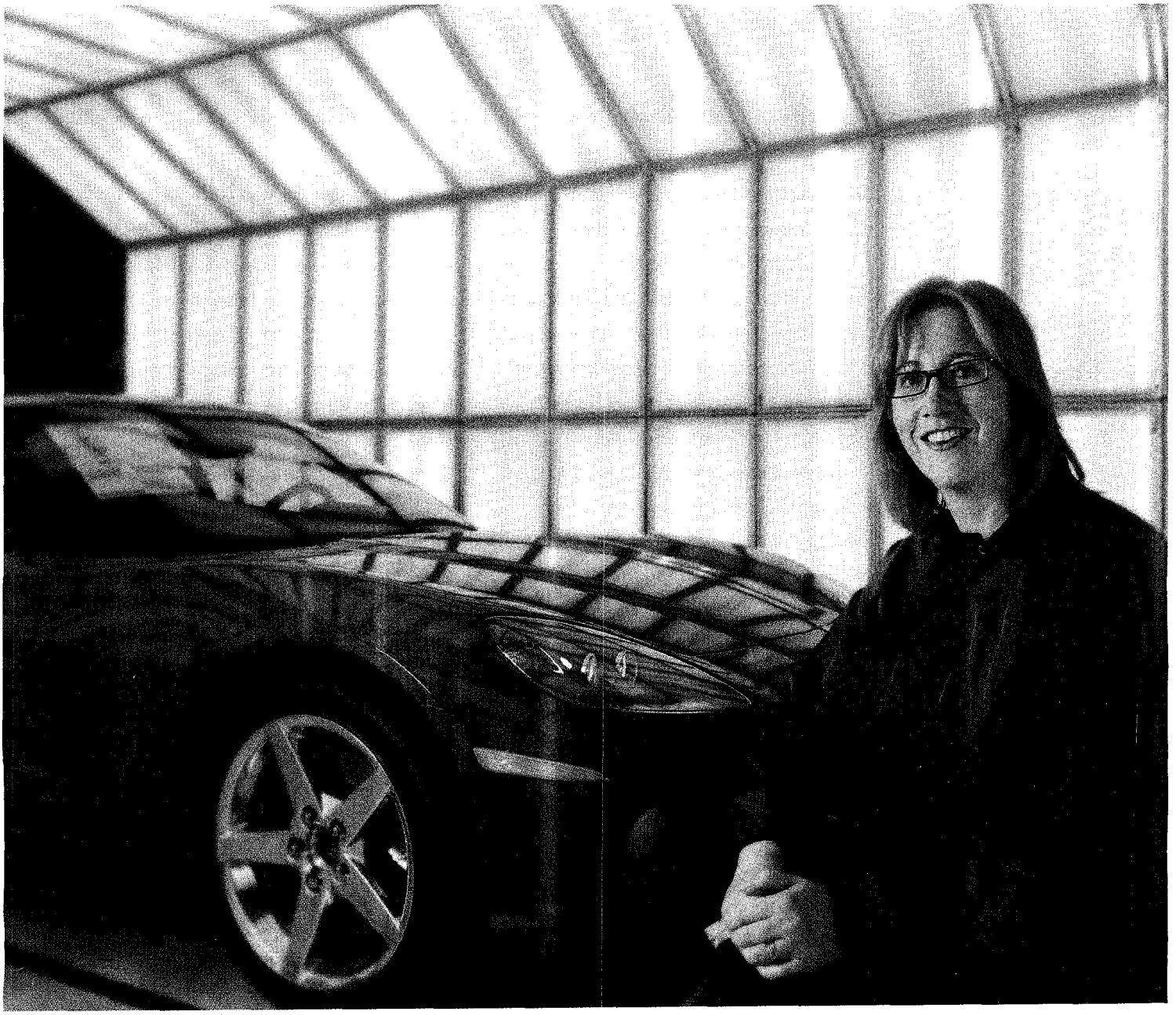

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